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VOL. LXXVII. **Saturday, July 15, 1933.** No. 28

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Current Topics.

A Distinguished Lawyer-Novelist.

By the passing of Sir Anthony Hope Hawkins, English literature loses one of its distinguished representatives, and English law one who but for a seemingly fortuitous circumstance might have risen to high rank in the profession. To the fact that he was a kinsman of Mr. Justice Hawkins, afterwards Lord Brampton, was due his selection as judge's marshal on several occasions, the duties of which, though certainly not onerous, gave him an interesting insight into legal administration. His real initiation into active legal work, however, came when a kind friend recommended him as "devil" to Mr. (afterwards Mr. Justice) R. S. Wright, a profound lawyer with a large practice in heavy work. Of Wright, Sir Anthony entertained an exalted opinion, not only for his great legal knowledge, but for the immense pains he bestowed upon all his cases. "It was not enough for him" [Wright], said Sir Anthony, "to win a case; he must win it on the right point; it was in vain to suggest (as one sometimes profanely did) that such and such a point would be good enough for Mr. Justice So-and-So; it was not therefore good enough for Wright." When Wright was promoted to the Bench, Mr. Asquith succeeded to the chambers, to many of the briefs that would gave gone to the new judge, and to the services as "devil" of Sir Anthony. Briefs for Mr. Asquith were mastered, and some came to himself; then Mr. Asquith went to the Home Office. By this time literature had begun to throw its spell over Sir Anthony, and in this sphere he became more and more absorbed, so much so that when Mr. Asquith returned to the Bar, his old "devil," for whom he sent, had chosen the path of letters, and his life in the law was over. Thenceforward his name appeared on many fascinating works of fiction which found favour, not only with the general public, but with many of his old friends in the law. Lord Chief Justice Russell, who was a great novel reader, once, in conversation with Sir Anthony, expressed approval of Stanley Weyman's "Prisoner of Zenda," and kindly complimented Sir Anthony on his "Gentleman of France"—another illustration of the truth that Homer occasionally nods. Sir Anthony's comment, though not to the Chief Justice, was that "a parent clings to his own child and I will not accept even a handsomer changeling."

The Value of Grand Juries.

An interesting sidelight on the above controversy is afforded by the case of *R.* v. *Earl*, at the last Birmingham Quarter Sessions, where the defendant was indicted for obtaining money by false pretences. The case for the prosecution was that he had induced four pupils to pay premiums for tuition in commercial art (with a guarantee of subsequent employment) whereas he only had a bogus business. In his charge to the grand jury, the learned Recorder (Mr. E. W. Cave, K.C.), suggested that there was insufficient evidence to place the defendant upon trial, but a true bill was nevertheless returned. The defendant's case was that he was an accomplished artist (specimens of his work being produced), and the witnesses for the prosecution admitted that they had had some months' tuition. The case was ultimately stopped by the petty jury, and the learned Recorder (in discharging the defendant) remarked that the case ought never to have been committed for trial, and a true bill ought not to have been found, as it was doubtful whether even civil proceedings would succeed. As the prosecution was also held to be frivolous, the costs thereof were disallowed. It is to be noted that the above was a reversal of the accepted procedure, whereby the grand jury (by throwing out bills) have come to be regarded as the champions of liberty. The incident, nevertheless, reveals the grand jury in another aspect, viz., as a vigilance committee, with useful powers of checking any prevalent mischief. The abolitionists will, doubtless, point to the above incident as illustrating the absurdity of the procedure, under which (after a trained lawyer has expressed the opinion that there is no case against the defendant) the grand jury (of laymen) may, nevertheless, cause him to be placed in the dock and given in charge of the petty jury. On the other hand, those in favour of preserving the grand jury may use the above incident as a strong argument in favour of retention, as the grand jury may show itself as a bulwark against the evildoer—in the event of any laxity arising in the procecution of any particular kind of offence.

Arbitration Clause in Motor Insurance Policies.

In *Jones* v. *Birch Brothers, Ltd.*, reported in *The Times*, 11th July, the Court of Appeal dismissed an interlocutory appeal from a judgment of Swift, J., who, considering himself bound by the decision of the Court of Appeal in *Freshwater* v. *Western Australian Insurance Co., Ltd.* [1933] 1 K.B. 515, made an order staying third party proceedings under s. 4 of the Arbitration Act, 1889, in an action for damages for personal injuries arising out of a motor accident. In the case last mentioned, Lord Hanworth, M.R., said that under s. 4 above it was not a matter of simple discretion to be exercised by a judge. The court must hold the parties to their contract, unless some sufficient reason, adequate in the circumstances, justified the court in setting aside a term of the contract. It was held, following the principles enunciated in *Woodall* v. *Pearl Assurance Co.* [1919] K.B. 593, and *Golding* v. *London and Edinburgh Insurance Co.* (1923), 43 Ll.L.R. 487, that

the rights of an insurance company were not affected by s. 1 of the Third Parties (Rights against Insurers) Act, 1930, or by s. 36, sub-s. (4) of the Road Traffic Act, 1930, and that the company was entitled to rely on the provision which made it a condition precedent to bringing an action that an award should first be obtained. Reference may be made to *Scott* v. *Avery* (1856), 5 H.L.C. 811, where the legal position in cases of this character is set out in the headnote as follows: "It is a principle of law, that parties cannot by contract oust the courts of their jurisdiction; but any person may covenant that no right of action shall accrue till a third person has decided on any difference that may arise between himself and the other party to the covenant." In *Jones* v. *Birch Brothers, Ltd.*, it was argued that the arbitration clause in the policy with the addition that the obtaining of an award should be a condition precedent to the company's liability was of no effect in view of s. 38 of the Road Traffic Act, 1930, which enacts, *inter alia*, that "any condition in a policy . . . providing that no liability shall arise under the policy or that any liability so arising shall cease in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy, shall be of no effect in connection" with certain claims (see s. 36, sub-s. (1) (*b*)). SCRUTTON, L.J., expressed himself as unable to see how the ordinary arbitration clause without what he termed the "*Scott* v. *Avery*" addition was affected by s. 38 of the Road Traffic Act. It did not provide that any liability under the policy should cease in the event of a specified thing being omitted to be done, but only that the continuing liability under the policy should be determined in a particular way according to the agreement of the parties unless the court otherwise ordered. Nor did the *Scott* v. *Avery* part of the condition—severable from the other part—make matters worse. It was an agreed additional way of enforcing the agreement of the parties.

Liberty to Work Coal: Income Tax.

THE decision of the Court of Appeal in *Elliot* (*Inspector of Taxes*) v. *Burn* (77 SOL. J. 502), is of considerable interest. The appellant landowners granted in 1906 to a firm the surface liberties required in the working of coal. In 1922 they granted to the same firm liberty to work coal under the land, the consideration being a rent of £150 and a royalty of 1½d. per ton worked. The surface of the land was let to a farmer at a rack rent taxed under Sched. A of the Income Tax Act, 1918. From the year 1923 to 1929 the firm in question had paid, without deduction of tax, some £2,950 to the appellants and assessments were made on these payments, the Crown contending: (1) That they were profits or gains; (2) that they were not a distribution of profits to the owner of the soil or property from which the colliery owner could deduct tax; (3) that they were not part of the annual value of the land, as already taxed under Pt. I of Sched. A, but that they came under the heading of "all other profits not before enumerated . . . arising from lands . . ." in r. 7 of Pt. II of Sched. A. The Special Commissioners discharged the assessments. FINLAY, J., held that the payments were within the rule just cited. In the Court of Appeal Lord HANWORTH, M.R., distinguished the subject-matter of the agreement from the grant of a pathway or the right to run a tramway, or to make use of the land in any ordinary way. It was not the case of an easement, but of an owner parting with his right to support, where—as is well established—the right to protect does not arise until the land sinks. The sums which had been assessed were not, it was held, profits within the meaning of r. 7 above quoted, but, in the words of the learned Master of the Rolls, "sums given to the owner of land to deter him from exercising his protective right to restrain the damage to the land." The payments, although they might be quantified by the amount of mineral extracted, did not arise from the use of the land which had already paid its tax. The appeal was, therefore, allowed with costs.

The Dependency of Adopted Children.

A HARDSHIP occasioned by a *casus omissus* in a Statute has recently been revealed. In *Wheelock* v. *Clay Cross Colliery Co. Ltd.*, at Alfreton County Court, an award was claimed in respect of a child (born on the 4th January, 1928) who had resided continuously (from the age of six weeks) with the applicant and her deceased husband. The applicant's case was that (1) on the 25th May, 1928, the magistrates had made an order under the Adoption of Children Act, 1926, (2) the child was thereafter known as Lottie Wheelock, and (having been continuously maintained by the deceased) was wholly dependent upon his earnings, (3) the applicant (being now bound to maintain the child) was entitled to unemployment benefit for her. The respondents' case was that the above Act did not bring an adopted child within the purview of the Workmen's Compensation Act, 1925. In a reserved judgment, His Honour Judge Longson observed that neither of the above Acts regularised the position with regard to an adopted child's compensation, although the Adoption of Children (Scotland) Act, 1930, s. 5 (2), provides that an adopted child shall, for the purposes of (*inter alia*) the Workmen's Compensation Act, 1925, be treated as being the child of the spouses adopting him or her. Having regard to the fact that the child's maintenance and education had devolved upon the deceased, it was held that she was a dependant, and an award was made accordingly, subject to a stay of execution for twenty-one days—pending an appeal. The latter appears to have a reasonable chance of success, in view of the decision of the Court of Appeal in *Ward* v. *Dorman Long & Co. Ltd.* (*The Times*, 21st June, 1933). Nevertheless it is anomalous that such children's rights should vary, north and south of the Tweed, and it is to be hoped that their position in England and Wales will be remedied by legislation.

Liquidator's Liabilities for Misfeasance.

THE case for an extension of county court jurisdiction is supported by recent proceedings at Leominster in *In re Bodenham and Sons Ltd.* The liquidator (in the compulsory winding up) claimed a declaration that the respondent (as a director and/or liquidator in the voluntary winding up) was liable in damages for misfeasance, viz. (*a*) a wrongful declaration of solvency under the Companies Act, 1929, s. 230; (*b*) wrongfully carrying on the business from October, 1930, until the 14th May, 1931, in breach of his duty as liquidator; (*c*) wrongfully expending £4,053 (assets of the company) in the purchase of shares of the company. The respondent's case was that (*a*) on his estimate of the value of the stock, there was a surplus of £964, and the company was apparently solvent; (*b*) he had carried on the business for the benefit of the creditors, and (as he had guaranteed the bank overdraft) his action had produced a dividend of 5s. in the £, instead of about 1s. 6d.; (*c*) he was unaware that it was illegal for a company to purchase its own shares (or that a reduction of capital must be approved by the court), but the claim was statute-barred—as the transaction occurred in 1925. His Honour Judge ROOPE REEVE, K.C., observed that the charges were not based upon fraud, but the respondent had been reckless in his conduct. It was held that (*a*) under this head the liquidator was entitled to £456 as damages; (*b*) as the delay had resulted in enhanced prices, no award was made under this head; (*c*) the respondent was liable for £4,053 for this misfeasance; (*d*) the respondent (being entitled to stand in the shoes of the bank) was entitled to £435 by way of set-off. With other smaller items, the respondent was therefore liable for over £5,000, but (as he might be entitled to a portion thereof as a shareholder) the applicant agreed not to exact payment of the whole amount. An order was made, however, for £1,000 to be paid in two months (from the service of the order) and the balance after a further two months—the respondent to pay the costs. It is anomalous that, in common law matters, the same judge only has jurisdiction up to one-fiftieth of the amount involved in the above case.

The Right to Arbitration in Agricultural Disputes.

THE complexities arising out of s. 16 of the Agricultural Holdings Act, 1923, have provided more material for the adjudication of the courts than the rest of the Agricultural Holdings Acts put together; and it is by no means certain that the scope of that section has been defined with certainty even as yet. Cases are constantly arising in which it is necessary for the legal adviser to consider carefully the bearing of s. 16. For instance, it is possible to imagine a case in which a tenant is in arrear with his rent for a considerable period. In respect of that, his landlord can only distrain for such rent as has been in arrear for more than twelve months (*vide* s. 34). The tenant has been holding up his rent in view of claims he himself has against his landlord for breach of covenant alleged. Supposing the landlord should take action in the High Court for the recovery of the amount owing to him for rent, the tenant can immediately bring up his counter-claim, and the effect of so doing will probably be that under s. 16 the whole matter will have to be referred to arbitration. That is only one illustration of the complications which may ensue especially when it is possible for one party or the other to allege breaches of covenant in the agreement of tenancy.

The terms of s. 16 deserve careful consideration, and it will be convenient to set out sub-s (1) in full:—

> "Any question or difference arising out of any claim by the tenant of a holding against the landlord for compensation payable under this Act or for any sums claimed to be due to the tenant from the landlord for any breach of contract or otherwise in respect of the holding, or out of any claim by the landlord against the tenant for waste wrongly committed or permitted by the tenant or for any breach of contract or otherwise in respect of the holding, and any other question or difference of any kind whatsoever between the landlord and the tenant of the holding arising out of the termination of the tenancy of the holding or arising, whether during the tenancy or on the termination thereof, as to the construction of the contract of tenancy, and any other question which under this Act is referred to arbitration shall be determined, notwithstanding any agreement under the contract of tenancy or otherwise providing for a different method of arbitration, by a single arbitrator in accordance with the provisions set out in the Second Schedule to this Act."

The first thing to inquire is as to what is included in the expression "compensation payable under this Act." That expression will, of course, cover the provisions of s. 1 relating to "improvements" being improvements which are set out in the First Schedule to the Act; and here it may be noted that by sub-s. (3), the tenant may claim compensation under custom, agreement or otherwise in lieu of the compensation provided by this section. Secondly, it covers compensation under s. 9 in respect of increased or diminished value of the holding; then under s. 11, for damage to crops by game; and under s. 12, compensation for disturbance. This section (12) is very complicated by reason of the numerous provisos it contains.

It will next be observed that the expression "breach of contract or otherwise in respect of the holding" must be read in conjunction with s. 30 (2) of the Act and deals with the subject of freedom of cropping and disposal of produce, giving the tenant the full right to plant the land and dispose of his crops as he thinks fit, notwithstanding any contract of tenancy or agreement relating thereto; but it goes on to provide that if he exercises this right in such a manner as to injure or deteriorate the holding the landlord may be entitled to recover damages in respect of that and if necessary obtain an injunction. We thus come up against one of the events in which despite the emphatic terms of s. 16, arbitration may be excluded; and if we look ahead for further illustrations of the same thing, we find in the case of *Lowther* v. *Clifford* [1927] 1 K.B. 130, a further pronouncement as to displacement of arbitration from the scope of this section. In that case a lease had been granted to the defendant for a period of seven years of 9 acres of agricultural land in which there was a covenant by him to pay all assessments and outgoings except the landlord's property tax. After the lease expired the defendant held over as a yearly tenant for a long period of years and then the local authority made up the road upon which the land abutted under the Private Street Works Act, 1892, and demanded and received payment of the expense incurred thereby from the plaintiffs, who were the landlords. Thereupon the plaintiffs sought to recover this sum from the defendant under the terms of the lease. The case came before McCardie, J., and the defence in part was that the land was a market garden and therefore a "holding" within the meaning of s. 57 of the Agricultural Holdings Act, 1923, and that therefore the issue was one for arbitration and should not be tried by the court. The learned judge held that the land in question was an orchard and not a market garden or holding within s. 57 of the Agricultural Holdings Act, 1923, but that, even if it was a holding within that section, s. 16 of that Act did not apply so as to exclude the jurisdiction of the court.

From this the defendant appealed. The Court of Appeal, affirming the decision of McCardie, J., generally, took the view that it was an agricultural holding—which, however, did not affect the main issue. The court agreed with the learned judge below that s. 16 of that Act was not to be read with an unrestricted meaning, but that its operation was limited to questions referred to arbitration by other sections of the Act, whether arising during the continuance of the tenancy or after its determination; and disapproved of the decision in *Rex* v. *Powell* [1925] 1 K.B. 641, upon the construction of s. 16, adopted with reservation in *Harrison* v. *Ridgway* (1925), 133 L.T. 238. Their lordships also held that there was no such clear expression in s. 16 as would, by compelling arbitration, be sufficient to deprive the plaintiffs of their right, preserved by s. 54, to sue in the King's courts, and that they were entitled to recover in this action the expenses in question.

In *Rex* v. *Powell* the landlord of an agricultural holding gave his tenant notice to quit on a certain day and alleged that before that day arrived the notice to quit was withdrawn by mutual consent. This was denied by the tenant, who continued in occupation after the date on which the notice would have expired. Later, an arbitrator was appointed to determine the following questions, viz.:—

> (1) Whether the tenancy had been determined by the notice to quit;
>
> (2) Whether the tenant was entitled to compensation for disturbance, and if so, what amount thereof; and
>
> (3) The amount of the compensation to the tenant for improvements and certain other matters.

A rule of prohibition was then sought at the instance of the tenant to prevent the arbitrator from proceeding, on the ground that the tenancy had not been determined by notice to quit and that the tenant had not quitted the holding in consequence of such notice or at all. The court, making absolute the rule for prohibition, held that these were not questions which under s. 16 (1) could be determined by arbitration unless they were questions "arising out of the termination of the tenancy"; and that as it did not appear that the tenancy had been terminated the arbitrator could not proceed. This decision seems to have been inspired by observations in *Simpson* v. *Batey* [1924] 2 K.B. 666, which was merely a question as to whether a new tenancy had or had not been created. That, however, was a matter (as Lord Hanworth, M.R., remarked in *Lowther* v. *Clifford*) quite outside the matters within the purpose of s. 16.

In *Harrison* v. *Ridgway* the tenant of a farm holding under a yearly tenancy a lease containing a clause by which the landlord covenanted that he would "before the commencement of the tenancy put all gates, etc., and the buildings in reasonable tenantable order and condition or allow the tenant the cost of such reparations." The tenant brought an action in the county court to recover damages amounting to £75 which he alleged were occasioned by breach of covenant. The county court judge upheld the objection of the landlord that the dispute ought to have been decided by arbitration, and against this the tenant appealed. The court (Bankes and Scrutton, L.JJ., sitting as additional judges of the King's Bench Division) reversed the decision of the county court judge, but both judges expressed hesitation as to the decision in *Rex* v. *Powell*, though unable to overrule it. Scrutton, L.J., in the course of his judgment, referred to the clause in s. 16, which says, "any question arising whether during the tenancy or on the termination thereof as to the construction of the contract of tenancy," and this claim in the appeal under consideration was, said the learned lord justice, clearly a claim for breach of the contract in respect of the holding, and it seemed to him inappropriate and impossible to say that because the claim raised the question as to the construction of the contract—which every claim for breach of contract must do—there was no escape from the decision in *Rex* v. *Powell*. Continuing, Scrutton, L.J., added this :—

> "I desire to add that when a superior court does come to deal with the meaning of s. 16—and s. 16 seems to me to raise some exceedingly important and far-reaching questions—I hope they will consider the suggestion which I made at the end of my judgment in *Simpson* v. *Batey* that s. 16 is really providing a method of arbitration for questions which in other parts of the Act are referred to arbitration, and that, if the question before the court is not one which by parts of the Act is referred to arbitration, it is not dealt with in s. 16."

When *Lowther* v. *Clifford* went to appeal, Scrutton, L.J., was a member of the court, sitting with Lord Hanworth, M.R., and Sargant, L.J. Their decision as epitomised above was unanimous. It is therefore clear that the judgments in this case are the last word in determining the scope of s. 16. The practical effect of these judgments may be summed up shortly as follows : Section 16 is not all-embracing. Arbitration is only compulsory in respect of matters which come within the true scope of the Act, that is to say, matters which by the Act itself are in fact referred to arbitration. Only such matters can displace the ordinary legal rights of the parties as expressed in s. 54 thus :—

> "Except as in this Act expressed, nothing in this Act shall prejudicially affect any power, right, or remedy of a landlord, tenant, or other person vested in or exercisable by him by virtue of any other Act or law, or under any custom of the country, or otherwise, in respect of a contract of tenancy or other contract, or of any improvements, determinations, waste, emblements, tillages, away-growing crops, fixtures, tax, rate, tithe rent-charge, rent, or other thing."

The conclusion of the whole matter, therefore, is that when trouble arises between the landlord and the tenant of an agricultural holding the first thing essential is to see whether the matter is one which by the Act of 1923 is definitely referred to arbitration. If it is not, then it must be dealt with in the ordinary way of litigation, as it is an open question whether it can be arbitrated upon even by mutual consent.

MIDLAND BANK LIMITED.

The Directors of the Midland Bank Limited announce an interim dividend for the half year ended 30th June last at the rate of 16 per cent. per annum, less income tax, payable on 15th July.

Costs.

Conveyancing Costs.

It may not be out of place now to supplement the summary of provisions relating to conveyancing costs with a few notes dealing with their application.

In the first place, the General Order of 1882 applies only to work done in connection with property situated in England. The limitation is regulated, it should be observed, by the situation of the property, and not by the place where the work is done. This was definitely decided in the case of *In re Greville*, 60 L.T. 43, where the whole of the work of deducing the title, perusing the conveyance and completing the sale was effected by solicitors in England in respect of property situated in Ireland, and it was decided that the General Order did not apply.

The scales of costs apply even where the business arises out of an action, e.g., a partition action (see *In re Merchant Taylors Co.*, 30 C.D. 28). It has been stated earlier that the scales of costs apply only where the solicitor does substantially the whole of the work covered by the scales. Opinions may vary as to what is meant by the term "substantially the whole of the work," and each case must be judged on its own facts. Thus, in the case of *In re Lacey & Son* (1883), 25 C.D. 301, where the purchaser, who was paying the vendors' costs, intimated that he did not require an abstract of title or the title investigated, the court held that the scale under Sched. I of the Order did not apply. Fry, L.J., in that case, pointed out that Sched. I provided, so far as the vendors' solicitors were concerned, for four things, namely, deducing the title, perusing the conveyance, completing the conveyance, and preparing the contract or conditions. He observed that the scale could not apply unless the work under the first three headings was done. It was not essential that a contract or conditions should be prepared, for the Schedule plainly stated that the scale charge included this work only if a contract was or conditions were in fact prepared.

The same principle applies to the scale under Pt. II of Sched. I relating to leases, and again substantially the whole of the work must be done in order that the scale fee may be charged (see *In re Hickley & Steward* (1885), 54 L.J. 608), where solicitors prepared an agreement for a lease, which did not materialise, with the terms annexed in a schedule. The charge for preparing such agreement was made out in detail. Subsequently a lease was prepared and executed embodying the terms and the solicitors charged for the lease according to the scale in Pt. II. Chitty, J., however, decided that he must follow the decision *In re Lacey*, *supra*, and directed that the charges for the lease should be made out according to Sched. II since the solicitors had not done substantially the whole of the work covered by the scale in Pt. II. Reference may also be made to the case of *Wellby* v. *Still* (1895), 72 L.J. 108, in which Kekewich, J., decided that where building leases merely followed a printed form, the blanks for the date, name, descriptions of parcels, etc., only requiring to be filled in, the lessors' solicitors were not entitled to charge according to scale, but must be remunerated according to a *quantum meruit* basis under Sched. II.

It is important to bear in mind that the scale fee for leases covers all negotiations with the party to or by whom the lease is eventually granted (see *In re Field* (1895), 29 C.D. 608), a Court of Appeal decision, and *In re Emmanuel & Simmonds* (1886), 33 C.D. 40, another Court of Appeal decision), where it was definitely decided that the scale for leases included not only the negotiations but also the preparation of the agreement for the lease. The lessors' solicitors ingeniously argued in that case that the heading of Pt. II, namely, "Scale of Charges as to Leases or Agreements for Leases," implied that the charge for an agreement for a lease was not included in the scale charge, but this contention failed. The leading case on these points is *Savery* v. *Enfield Local Board* [1893] A.C. 218,

a decision of the House of Lords. In this case, it will be observed, the agreement for the lease even contained stipulations for repairs to be effected, but it was decided that the preparation of this agreement was covered by the scale charge, and that it was not a collateral agreement.

Where a solicitor is instructed to let a house and enters into negotiations with a number of persons, then, even where one of such persons ultimately enters into a lease, the solicitor is entitled to be remunerated according to Sched. II in respect of the abortive negotiations with the other persons (see *In re Martin*, 41 C.D. 381).

Even where the property is let for a premium in addition to a rent so that the lessor's solicitor is entitled under r. 5 to charge in respect of the premium according to the scale in Pt. I of Sched. I, and in respect of the yearly rent according to the scale in Pt. II, no negotiating fee may be charged (see *In re Horn & Francis* [1896] 2 Ch. 797, in which Chitty, J., followed the decision *In re Field, supra*).

Company Law and Practice.

Subrogation.

THE doctrine of subrogation, as understood by the company lawyer, is a familiar one, and one of not infrequent application—the case of *Baroness Wenlock* v. *River Dee Co.*, 19 Q.B.D. 155, being usually referred to as the foundation of it. There is ground for saying that the term "subrogation" is not the happiest one to use to express what is required in this connection, for the term is capable of a stricter use, but it does conveniently express a doctrine well known and understood. The recent case of *Re Airedale Co-operative Worsted Manufacturing Society, Ltd.* [1933] 1 Ch. 639, is an illustration of the application of this doctrine.

This case contains decisions on two separate summonses in the winding up of the concern which gives its name to the report, but in the result there is little difference between the two cases. The facts in the first of these two cases were these: the Airedale Society, which went into voluntary liquidation in February, 1931, had, over a period of years, borrowed money from the Congleton Equitable & Industrial Co-operative Society. These societies were regulated by the provisions of the Industrial and Provident Societies Act, 1893, but nothing material for our present purpose turns on this, for the questions which were decided, whether or not the liquidator ought to admit particular proofs in the liquidation, might just as well have arisen on the liquidation of a company. The method by which the borrowing was carried out was this: in 1882 Congleton invested certain of its surplus funds in subscribing and paying for shares in Airedale. Now shares in Airedale were entitled under its rules to interest at the rate of 5 per cent. per annum, and to a dividend representing a proportion of the society's trading profits, which might be described as being in the nature of a participating dividend: while those who traded with the society also became entitled to a share in the profits in respect of their purchases.

In addition to having these shares, Congleton from time to time bought goods from Airedale, and consequently became entitled to the share of profits accruing to purchasers. In the year 1882, after the subscription for these shares, the two societies agreed that all sums representing the 5 per cent. interest and the participating dividend on the shares, and also Congleton's share of profits in respect of purchases from Airedale, should be lent by Congleton to Airedale. These various sums were transferred to a loan account as and when they became payable, and receipts were given for them by Airedale. No difficulty would have arisen but for the fact that these loans had not been repaid at the date of liquidation, and the proof put in in respect of them was rejected by the liquidator on the ground that the borrowing was *ultra vires* Airedale. A summons was taken out asking that the decision of the liquidator in rejecting the proof might be reviewed, and the first question which arose on the hearing of such summons was on the construction of the rules; but no good purpose can be here served by going into this, beyond saying that the learned judge held that, except to a comparatively small amount, the borrowing was *ultra vires*. But this did not conclude the matter, because Congleton claimed that notwithstanding the *ultra vires* nature of the transaction, the moneys had been applied in paying off legitimate indebtedness and, to the extent to which the moneys had been so applied, Congleton was entitled to prove in the liquidation.

The argument that the moneys had been applied in paying off legitimate indebtedness seems to have proceeded on two alternative footings: the first being that the legitimate indebtedness which was discharged by the loan was the indebtedness of Airedale in respect of interest, dividend or bonus on purchases: in other words, Airedale owed Congleton, say, £5 in respect of a bonus, and that £5 was paid by Airedale to Congleton out of a loan of £5 simultaneously made by Congleton to Airedale. With regard to this, however, the learned judge says, in his judgment at p. 646: "I doubt if this is a well-founded argument, for the loan did not reduce the indebtedness of the society; the nature of the liability was changed, but the indebtedness remained and the creditors were the same"; he then goes on to say that he does not think it necessary for the applicant to rest on that submission.

The other footing on which the argument in favour of subrogation was put was the evidence put in to the effect that the loans were necessary to enable the receipts to balance expenditure, and that all expenditure was applied in paying the proper debts of Airedale. To counter this, there was an interesting argument advanced on behalf of the liquidator. It was said, in effect, that there was no provable debt; no action would lie against the society in respect of it, and therefore the proof was bound to be rejected. Thus, in the case of *Re National Permanent Benefit Building Society*, 5 Ch. App. 309, it was held that a lender to the building society, where the borrowing was *ultra vires*, was not entitled to present a petition for winding up on the ground that the borrower had no legal or equitable debt. It certainly seems a somewhat strange result that a person who has not a debt on which he can petition, can yet prove in the liquidation, if someone else takes steps to get the company wound up, but this is the result.

In the *Airedale Case*, Eve, J., held that Congleton was entitled to prove on the ground that the borrowed money had been used to pay off legitimate indebtedness, and that therefore under the well-settled doctrine the lenders were entitled to rank as creditors to the extent to which the money had been so applied. The second case in *Airedale* was slightly different, in that Airedale there had borrowed a lump sum from the applicants, which lump sum was immediately applied in reducing a bank overdraft of Airedale, which represented legitimate borrowing. This case certainly seems to be a clearer case than the other.

What is the law on these points? There has been substantial divergence of judicial opinion as to the theory of subrogation, though there seems to be no divergence as to its ultimate result. "This equity," says Fry, L.J., in his judgment in *Baroness Wenlock* v. *River Dee Co.*, 19 Q.B.D. 155, at p. 165, "is based on a fiction, which like all legal fictions, has been invented with a view to the furtherance of justice. The court closes its eyes to the true facts of the case, viz., an advance as a loan by the quasi-lender to the company, and a payment by the company to its creditors as out of its own moneys; and assumes on the contrary that the quasi-lender and the creditor of the company met together and that the former advanced to the latter the amount of his claim against the company and took an assignment of that claim for his own benefit."

But this is a view that Lindley, M.R., absolutely refused to accept when he was considering the position in *Re Wrexham, Mold & Connah's Quay Railway Co.* [1899], 1 Ch. 205, 440. "The decision of the court in *Baroness Wenlock* v. *River Dee Co., supra,* was quite right, and the judgment in it is very valuable. Fry, L.J., who delivered it, was the last person to shut his eyes and not get at the real facts and substance of any case before him. But in dealing with that case he says: 'the court closes its eyes to the true facts of the case.' I cannot help thinking that this is incorrect. A prohibition against borrowing more than a given sum is only in reality and substance disobeyed when an obligation to pay more than that sum is contracted. Courts of Equity have always looked into the facts to see whether the prohibition has been reallly disobeyed or not. If it is disobeyed, and to the extent to which it is disobeyed, the prohibition is enforced . . . The application of the money borrowed shows whether the obligations of the borrowing company have been increased or not, and the extent, if any, to which they have been increased. So far as the money has been applied in discharging debts or liabilities which could be enforced against the company the prohibition against borrowing does not apply to it, and the courts have so decided."

It is, however, apparent that, whatever the basis of the doctrine, its application is not thereby affected: "It is still open to your Lordships' House to adopt either view, should the question actually come up for determination," says Lord Parker of Waddington, in his speech in *Sinclair* v. *Brougham* [1914], A.C. 398, at p. 441, and there we may safely leave the matter.

A Conveyancer's Diary.

Restrictive Covenants.

I HAVE written on this subject from time to time, and I think, dealt more or less exhaustively with it. I return to the subject now because of the recent decision of the Court of Appeal in *Re Union of London and Smith's Bank Limited's Conveyance; Miles* v. *Easter* [1933] 1 Ch. 611.

In one respect, at any rate, that case settles a question which has not hitherto been definitely decided, but it is instructive in other respects.

Perhaps I may say at once that we now have the authority of the Court of Appeal for advising that, where a vendor has imposed upon a purchaser restrictive covenants, retaining land for the benefit of which, although not expressly stated, the covenants might enure, and afterwards parts with the land so retained without expressly assigning the benefit of the covenant, the vendor cannot afterwards assign the benefit of the covenant to his assignee of the land so retained.

If the benefit of the covenant passes to the assign of the retained land without express assignment, so much the better for the assign of that land; but if it does not, the assignee of the retained land cannot afterwards secure the benefit of the covenant for himself by obtaining an express assignment of it. In other words, the assignee of the retained land, if he is to enforce the covenant, must show either (*a*) that the benefit of the covenant passed to him without any express assignment, or (*b*) that the benefit of the covenant was assigned to him at the same time as the land retained by the vendor was conveyed to him.

I have always understood that to be the result of the decision in *Formby* v. *Barker* [1903] 2 Ch. 539 and *Chambers* v. *Randall* [1923] 1 Ch. 149.

In the former case the facts were, that the plaintiff was administratrix with the will annexed of one Formby who by his will gave and bequeathed all his property to her. By a conveyance, dated in 1868, certain land (including some land coloured pink on the plan drawn on the deed) was conveyed by Formby and his mortgagees to a land company. The deed contained a covenant restrictive of the user of the land and a power of re-entry within twenty years upon any breach thereof being committed. The deed comprised the whole of the land belonging to Formby in the neighbourhood. The defendant was an assignee from the land company of part of the land coloured pink on the plan, and he acquired that land with notice of the restrictive covenant.

Formby died in 1884 and letters of administration with the will annexed were granted to the plaintiff, who was his widow.

In 1902 the defendant commenced to erect on part of the pink land shops which (it was contended) were intended for uses which would have been a breach of the covenant. There was considerable discussion as to the construction of the covenant and as to whether the shops erected constituted a breach or not. I am not concerned with that. It was in fact decided that there was no breach, but the decision went further and laid it down that, even if there had been a breach of the covenant, the plaintiff was not entitled to sue upon it. The argument in this case was very interesting, and amongst other ingenious contentions advanced for the defendant, it was sought to apply the maxim "*Actio personalis moritur cum persona.*" The court, however, disposed of that by holding that an action on such a covenant was not one of which the breach was a personal wrong.

One important point in the decision may be put in the words of Vaughan-Williams, L.J.: "I have not been able to find any case in which, after the sale of the whole of an estate in land, the benefit of a restrictive covenant has been enforced by injunction against an assignee of the purchaser at the instance of a plaintiff having no land retained by the vendor, although there are cases in which restrictive covenants seem to have been enforced, at the instance of plaintiffs other than the vendor, for the benefit of whose land it appears from the terms of the covenant, or can be inferred from the surrounding circumstances, that the covenant was intended to operate. In all other cases the restrictive covenant would seem to be a mere personal covenant collateral to the conveyance. It is a covenant which cannot run with the land, either at law or in equity, and therefore the burden of the covenant cannot be enforced against an assignee of the purchaser."

The decision, however, went further, for Romer, L.J., made it clear that, even if Formby himself could have maintained an action for breach of the covenant, his personal representative could not do so. His lordship said at the end of his judgment: "To avoid misconception I wish to add that in my opinion different considerations would apply if the action had been brought by R. H. Formby in his lifetime."

From this I think it may be deduced that once a covenantee has parted with all the land for the benefit of which the covenant is expressly or impliedly annexed, he cannot pass on the benefit of the covenant even to his personal representatives.

Chambers v. *Randall* was a case which further emphasises that point. I think that the headnote states accurately the result of the judgment. "Where a restrictive covenant has been entered into by a purchaser of land for the protection of the vendor's immediately adjoining land, but not so as to annex the benefit of the covenant to that land, the covenant is not enforceable against an assign of the covenantor by the executors of the covenantee if he had disposed of the whole of the adjoining property before his death. It can make no difference even when the executors are persons to whom part of the covenantee's property had previously been assigned without an express assignment of the benefit of the covenant. *Semble*, that the covenantee himself could not enforce the covenant against the assign of the covenantor after he had parted with all the adjoining property."

That means, as I have always thought, that a covenantee who has parted with the land for the protection of which the restrictive covenant is imposed but not so as expressly or impliedly to "annex" it to that land, he cannot afterwards

assign the benefit of that covenant to an assign from him of that land.

I have no space to deal this week at length with the decision in *Re Union of London and Smith's Bank Limited's Conveyance* which has many points of interest, and I will recur to it. For the moment the headnote suffices to show that it is directly in point upon the question with which I am mainly concerned this week. It reads: "Where on a sale otherwise than under a building scheme a restrictive covenant is taken, the benefit of which is not on the sale annexed to the land retained by the covenantee so as to run with it, an assign of the covenantee's retained land cannot enforce the covenant against an assign (taking with notice) of the covenantor unless he can show (i) that the covenant was taken for the benefit of ascertainable land of the covenantee capable of being benefited by the covenant, and (ii) that he (the covenantee's assign) is an express assign of the benefit of the covenant. But when the covenantee has once parted with the whole of his retained land he cannot thereafter effectually assign the benefit of the covenant."

This is, I think, a considerable advance and clarifies the position. It still, however, leaves untouched the vexed question as to when a covenant, although not expressly so stated, is deemed to be "annexed" to land retained by the covenantee, and there are other points in the case which are worth a careful study. I hope to return to it next week.

Landlord and Tenant Notebook.

Recovery of Possession by Ex-Landlord.

Cases in which landlords whose own interests were about to expire have taken proceedings against tenants whose interests had expired have no doubt always been cases in which extraneous considerations, not always apparent on the face of the record, have played some part. But, human nature being what it is, the position of the parties in such circumstances cannot be considered of purely academic interest.

The question whether the tenant has a defence to the action has been the subject-matter of various decisions, each tending to define the position more closely than the last.

The defendant in *Doe d. Morgan* v. *Black* (1813), 3 Camp. 447, had held glebe lands on a yearly tenancy, and the incumbent had given him notice to quit which had expired at Christmas, 1812. Meanwhile sequestration proceedings were being taken, which actually took effect when the sequestration was "read" in the parish on 17th January, 1813. The action came on on the 18th August, when it was decided that, the defendant having been a trespasser between 25th December, 1812, and 17th January, 1813, the rector was entitled to sue in ejectment; the position being analogous to that when a tenant for life plaintiff in ejectment dies pending the hearing; the action continues and this enables the party entitled to recover mesne profits. But it was said, *obiter*, that the rector could probably not have a writ of possession, and the *dictum* was the occasion of some misunderstanding, dispelled by the more recent cases.

These began with *Gibbins* v. *Buckland* (1863), 32 L.J. Ex. 156. The defendant had held an underlease of a cottage, which had run out on 19th September, 1862. The plaintiff held the mesne lease, which comprised two other cottages, and was due to expire at Michaelmas of the same year. As subsequently appeared, he had bought it with a view to obtaining a new lease of the whole of the property. A writ in ejectment was issued on 24th September, and the case came on for hearing on 31st January, 1863. As will be observed, Mr. John Doe had ceased to function by then; and the statute which put him out of business also provided that a claimant whose title had expired before trial should have a verdict and costs notwithstanding (C.L.P.A., 1862, s. 181), but also that verdicts should be entered in a particular form, which said "A.B. . . . was *and still is* entitled to the possession of the land within mentioned," etc. This was relied upon by the defendant, but the Court of Exchequer held that it had not the effect of depriving the plaintiff of his right of action; for aught they knew, the plaintiff might have acquired another title; if the defendant were to prove affirmatively that he had none, the position might be different.

The defendant then resorted to the Court of Chancery, and in *Buckland* v. *Gibbins* (1863), 32 L.J. Ch. 391, asked the court to restrain the defendant from taking out a writ of possession or other process to dispossess him of the cottage. I may say at this stage that both parties were negotiating with the freeholder for new grants, and possession is apt to confer as much advantage in fact as it does in law. The now plaintiff, had, in fact, actually commenced proceedings against the freeholder for specific performance of an alleged agreement for a twenty-one year lease, and he contended that it would be contrary to equity to allow the defendant to enforce his judgment. Further complications ensued when (1) the Master of the Rolls refused an injunction; (2) the plaintiff having obtained an interim injunction on appeal; (3) this was continued and then dissolved by the Master of the Rolls; (4) the plaintiff entered an appeal; (5) the freeholder gave in to his demands and granted the lease before the appeal came on. In these circumstances the Lord Chancellor, in view of the fact that it now appeared that the defendant had attempted to enforce his legal right after becoming aware of the agreement with the freeholder, granted a perpetual injunction, but could not see his way to award costs.

I think the most recent case is *Knight* v. *Clarke* (1885), 15 Q.B.D. 294, C.A. The underlessor in that case issued his writ in the three days intervening between the end of the term granted by him and the term he held! (Again, there was more in this than meets the eye; it is clear that the head lessor approved.) Again the court declined to accede to the argument that judgment could not be given because the plaintiff's interest had ceased. The gist of the decision is perhaps expressed more concisely in an observation made by Bowen, L.J., in the course of counsel's argument than in the judgments: "It is consistent with the evidence that the plaintiffs were entitled to possession with the licence of the freeholder."

It must also be remembered, before regarding these matters as being of academic interest only, that a tenant is under an implied covenant to deliver up premises at the expiration of his term.

Our County Court Letter.

THE RIGHTS AND LIABILITIES OF AIR PILOTS.

In *Easdown* v. *Hillman*, recently heard at Ilford County Court, the claim was for £8 as wages due and wages in lieu of notice, and the counter-claim was for £10 as damages by reason of the refusal of the plaintiff to make a return flight (from Plymouth to London) with press photographs. The plaintiff's case was that (1) on instructions, he had flown to Croydon, where he picked up a reporter of the *Thanet News*, and had then flown to Plymouth; (2) the reporter there received some photographs from the liner "Paris" (which was late from New York) so that the reporter did not return to the aeroplane until 5.10 p.m.; (3) lighting-up time was 5.55 p.m., but the aeroplane had only been signed out by the ground engineer at Romford as "Fit for light"; (4) the batteries had therefore been removed from the machine, and (as the aeroplane had no lights or equipment for night flying) the reporter had to return by train; (5) a pilot flying without lights, after sundown, was liable to a fine of £200 (or six months' imprisonment), but the plaintiff was nevertheless dismissed, on his return home next day. Corroborative

evidence (as to the plaintiff having acted properly) was given by a Schneider Trophy test pilot, and also by the manager of the defendant's aerodrome, who stated that the machine was not equipped with blind flying instruments or wireless. The defence was that an adverse criticism (by reason of the delay) had been received from the proprietor of the newspaper; but His Honour Judge Crawford held that an air pilot (like the captain of a ship) was entitled to exercise his discretion. Judgment was therefore given for the plaintiff on the claim and counter-claim, with costs. The position of air pilots, under the Workmen's Compensation Act, was considered in the County Court Letter in our issue of the 16th January, 1932 (76 SOL. J. 45).

THE LIABILITIES OF EDUCATION AUTHORITIES.

(*Continued from* 77 SOL. J. 280.)

A PROBLEM arising out of modern social conditions was recently considered at Liverpool County Court in *Palmer* v. *Rylance*. The claim was for £40 7s. as school fees for the defendant's son, and the counter-claim was for £20, being the cost of obtaining an order for custody of the boy in the High Court. The plaintiff's case was that (1) the boy, aged thirteen years, had been a boarder at his school; (2) in September, 1932, the plaintiff received contradictory instructions, viz., to hand over the boy to each of his parents; (3) the mother arrived first, and the plaintiff did not feel justified in refusing to hand over the boy to her. The defendant's case was that (*a*) he paid the school fees, and the plaintiff should have followed his instructions; (*b*) although the school hours continued until 5.30 p.m., the boy was permitted to leave at 4.30 p.m.; (*c*) for three weeks thereafter the boy was missing, and proceedings in the High Court became necessary for his recovery; (*d*) there was a previous order under which half the boy's holidays were spent with each parent. On behalf of the wife, an offer was made for the payment of the plaintiff's account, if the defendant was held not liable. His Honour Judge Procter gave judgment for the plaintiff (on the claim and counter-claim), with costs.

ACCIDENT TO SEAMAN IN PRIVATE DOCKYARD.

THE scope of a seaman's employment was recently considered in *Hope* v. *Tyne-Tees Shipping Co. Ltd.* at Blyth County Court, in which the claim was for compensation in respect of an accident on the premises of the Blyth Dry Docks and Shipbuilding Co., Ltd. The docks were private property, and the applicant (a second engineer) had taken a risk in following a certain route (while returning to his employment) and the consequence had been that he had fallen into the basin. His case was that, although he had not got his feet on the gangway of his vessel (when the accident happened), he had nevertheless entered the sphere of his employment. The respondents' case was that, at the time of the accident, the applicant was not carrying out any duty concerning his employment. His Honour Judge Thesiger observed that it was agreed that the dock premises (upon which the accident happened) were private property. It was therefore held that the applicant was only on the premises by reason of his employment, and an award was made in his favour of 30s. a week, with costs. This was in accordance with the decision of the House of Lords in *McCullum* v. *Northumbrian Steam Shipping Co. Ltd.* (1932), 48 T.L.R. 568.

THE ANNUAL DIGEST.

Sir John Fischer Williams and Dr. H. Lauterpacht have in the press a further volume of "The Annual Digest of Public International Law Cases." This volume covers the years 1923–1924, thus filling an existing gap and completing the record of decisions on points of international law, in courts and tribunals, international and national, for the years 1919 to 1928 inclusive. Messrs. Longmans hope to have this volume ready in July.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

Mr. Justice Nares died at Ramsgate on the 20th July, 1786, partly of gradual decay and partly a martyr to professional devotion, for "in the duties of his office, he was active and indefatigable, and perhaps by deferring too long a journey to Bath, fell, in some measure, a sacrifice to his assiduity. He perceived as soon as any about him the approaches of his death which was as resigned and calm as his life had been exemplary." He had been called to the Bar at the Inner Temple in 1741, subsequently practising on the criminal side. He was caricatured by Foote in "The Lame Lover," under the name of Serjeant Circuit. In 1751, he married the daughter of the Master of the Rolls, Sir John Strange. In 1771, when Bathurst, J., took the Great Seal into his incompetent keeping, Nares was selected to replace him in the Common Pleas. A contemporary appreciation of him runs as follows: "He was a man whom it is hardly necessary to praise; goodness of heart and pleasingness of manners made the number of his friends great and reduced that of his enemies as near as possible to nothing; so that wherever he was mentioned, it was with a respect and esteem which whenever he shall be remembered will surely be continued to him."

BACK TO LIFE.

In making an order presuming the death of a man who had disappeared in America, Mr. Justice Eve recently observed that once a man had walked into court while a petition to presume his death was being discussed. He may have been referring to a peculiar coincidence which occurred when Lord Langdale was Master of the Rolls. There was no positive evidence that the individual in question had died, but it appeared that he had gone abroad about thirty years before under circumstances of difficulty and had not been heard of since. Not being entirely satisfied, the judge ordered the matter to stand over for the production of additional evidence, and in due course, fresh affidavits were filed strengthening the case for the petitioners. The order was accordingly drawn up and taken to the proper office to be entered. There, the very clerk whose duty it was to enter it turned out to be the man whose death it was desired to presume. In his youth he had got into difficulties, fled the country, hidden from his relatives and returned to England under a new name. Meanwhile, he had been quite ignorant of the existence of the fund of which he was tenant for life and which the parties entitled on his death were attempting to have paid over to them. Serjeant Sullivan also tells a good story of a testator presumed dead, who walked into court just at the moment a learned judge was construing, or as it happened, misconstruing his will.

EARLY TO RISE.

At Southend County Court recently, His Honour Judge Crawford declared to the admiration of those present: "I am nearly seventy-two and I was up at 6.15 a.m. If there had been anyone about I should have risen at 5.15. There is far too much lying in bed in idleness these days." For shaking off dull sloth and early rising, however, he is even at that estimate still behind Serjeant Wilde (Lord Chancellor Truro that was to be) who even in winter used to drive up to his chambers at five o'clock in the morning to study his briefs. However, to be fair to the heavy sleepers and give them a precedent too, Sir Edward Clarke never violated the quiet of the restful hours. Once when he was Solicitor-General, Sir Richard Webster, A.-G., who had fixed a consultation with him at half-past nine in the morning, received the protest: "My dear Attorney, I will do anything in the world for you but I will not get up in the middle of the night." It was no professional enthusiasm that got Sir James Mansfield, Chief Justice of the Common Pleas, out of bed every morning at five when he was on circuit. As a keen sportsman, his hobby was to go out and kill something before breakfast.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Agreement with Building Society AS TO COLLATERAL SECURITY—REDUCTION OF INTEREST.

Q. 2770. In 1929 a building society agreed with A to make advances to purchasers of houses on his estate up to 100 per cent. of the purchase price on the understanding that collateral security should be provided by A in the case of advances exceeding a certain agreed figure. The letter from the building society containing particulars of the agreement reads: "This collateral security must take the form of either the deeds of another property or of cash which bears interest at the rate of 4 per cent. free of tax." A provided the latter form of collateral security, and the building society has for some years now held a substantial sum of cash and have been paying interest thereon at 4 per cent., tax free. The building society has recently notified A that the rate of interest will from a certain date be reduced to 3½ per cent. Can A insist upon receiving the agreed rate of interest, and (if necessary) take proceedings for the recovery of the deduction of ½ per cent.?

A. From the brief particulars given it would appear that if the letter is the only document there is a binding agreement with A which must be performed by the building society so long as the deposit made on the faith of it is required. Before insisting on what appears to be his rights, to have interest at 4 per cent. however, A should consider whether under the mortgage deeds the society has any right to call in the money advanced to the various purchasers so long as instalments are paid, and what would be his position if some of his purchasers were in arrear with instalments. It is usual for building societies to take a formal deed or agreement from the depositor or make him a party to the mortgage. If this was done the effect of the letter will probably have been wiped out.

Trustees for Sale of Leaseholds — POSTPONEMENT — INCIDENCE OF REPAIRS.

Q. 2771. A is entitled to a life interest in certain property, including a leasehold property having forty years unexpired, held by trustees under a settlement creating a trust for sale with power to postpone. A has been called upon to execute extensive repairs to the leasehold property, which repairs entail an expenditure practically equivalent to the income derived from the whole trust fund. A would be glad to know whether—

(1) He can call for any contribution from capital to defray expenses for repairs?

(2) He can, in spite of the opposition of the trustees of the settlement and ultimate beneficiaries, insist on a sale of this property?

A. (1) For the purpose of this reply it is assumed that there are no provisions in the settlement dealing with the matter. Having regard to s. 28 of L.P.A., 1925, the life owner is in the position of an equitable tenant for life: *Re Brooker, B.* v. *B.* [1926] W.N. 93. It is obvious that the trustees (and not A) are the persons legally liable under the leases. The trustees should act in an equitable manner in deciding whether the cost should be borne out of capital or income: *Re Smith, Vincent* v. *Smith* [1930] 1 Ch. 88, and cases there cited. The recent cases deal with freeholds devised on trust for sale. In the case of leaseholds it is considered the trustees should follow the principle laid down in *Re Betty*: *Betty* v. *Attorney-General* [1899] 1 Ch. 821, that want of repair existing at the date of the settlement should be made good out of capital, but those due to breaches of covenant since should be paid out of income.

(2) We do not think so. It is, of course, usually for the benefit of a life owner to keep comparatively short leaseholds. A could, of course, apply to the court for a direction to the trustees to sell, but would probably have to make out an exceptionally strong case (see the final paragraph of sub-s. (3) of s. 26 of L.P.A., 1925, as inserted by L.P.A. Amendment A., 1926).

Fraudulent Use of Electricity.

Q. 2772. This urban district council are the owners of the electricity works and are the undertakers for the district. They supply current for lighting at 7d. per unit, for power at 4d. per unit, and for domestic purposes at 1d. per unit. B is supplied by the council with current to light his house and also for domestic purposes. He has connected a standard lamp in his drawing room and a lamp in his bedroom with the plug of the domestic circuit, so that he has been obtaining current for 1d. per unit, for which he should have been paying 7d. Can the council successfully prosecute him under s. 23 of the Electric Lighting Act, 1882, or under any other Act, for fraudulently using or causing electricity, bearing in mind the Electricity (Supply) Bill now before the House of Lords?

A. The council can successfully prosecute B, in spite of any provision in the Electricity (Supply) Bill. For a consideration of the position, when a fine is imposed on the very day upon which the Royal Assent is given to an Act abolishing the offence, see the Current Topic entitled "Carrying Goods in Private Cars" in our issue of the 6th August, 1932 (76 SOL. J. 550).

Bastardy—AGREEMENT—UNDERTAKING NOT TO DISCLOSE PUTATIVE FATHER'S NAME—ADOPTION OF INFANT—DISCLOSURE OF NAME—EFFECT OF SUCH DISCLOSURE.

Q. 2773. On the 18th May, 1930, A, a spinster, gave birth to an illegitimate child, of which B was the father. The child was registered in the mother's surname. On the 2nd September, 1930, a bastardy agreement was signed whereby B undertook to pay 10s. a week to A towards the maintenance of the child, such payments immediately to cease (*inter alia*) "if A in any way communicated to any person the fact that the child was a child of B." On the 7th December, 1931, A married C. A and C wish legally to adopt the child, so that the adoption order may be registered and a certificate of adoption obtained which will not disclose the fact of the birth of the child being registered in A's maiden name. To obtain the adoption order it will be necessary to give the putative father notice (unless expressly waived by the magistrates) as being a person liable to support the child, and in any case the fact of the child being a child of B will be disclosed to a number of people, e.g., the magistrates' clerk and the guardians *ad litem*. We shall be glad of your opinion whether such disclosure will enable B to cease payment under the agreement, or whether such disclosure will be privileged.

A. In our opinion the notice to the putative father cannot be waived, but if it could there would be the disclosure which A has covenanted not to make. The breach of this undertaking would, we consider, release B from his obligation to pay under the deed. There is no question of privilege here.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Company Law Reform.

Sir,—There is no doubt that amending company legislation would be universally welcomed if it can restore the sadly shaken confidence of would-be investors, so that when returning prosperity, of which evidence is already to be seen, becomes an accomplished fact, a steady flow of investment may be assured in well established companies without the risk of serious capital depreciation.

What then are the directions in which we can most usefully turn for desirable reforms? I venture to suggest the following :—

(1) *Appointment of Auditors.*

If this can be controlled by the shareholders in fact, instead of only in theory, as at present, a valuable protective measure would be accomplished. A simple method is available. Let each company two months before its annual meeting convene a private meeting of its twenty-five largest shareholders and vest in them the exclusive right to nominate auditors for appointment at the forthcoming meeting. This audit committee would, of course, be free to confer with the directors and with the existing auditors, but they would, as they should, have an unfettered choice. Such a representative body would not be likely to disturb a satisfactory appointment, but the very fact that such a power exists would give security and confidence.

(2) *Annual Meetings.*

These offer the only opportunity each year for shareholders to take part in the control of their company's affairs. But, with present practice, this opportunity is only too frequently lost owing to the available time being taken up with the formalities of reading the notice convening the meeting, auditors' certificate, previous minutes, and a lengthy chairman's speech. But what is stated in the chairman's speech could just as well appear in the directors' report, which it would be far better for the company to advertise before instead of as at present after the meeting. My suggestion under this heading is that each meeting should open with a simple motion by the chairman for the adoption of the report and accounts, which motion, after formal seconding, should at once be put to debate. I further suggest that with the notice convening the meeting should be included a statement that any shareholder desiring to speak should notify the secretary beforehand, indicating the points he desires to raise and the information he proposes to ask to be furnished. Shareholders would then be called in the order in which they have given notice of intention to speak. At the conclusion of the debate the chairman would reply to the points raised, and of which he would have already received previous notice. The resolution would then be put to the vote.

(3) *Proxies.*

The argument for the present practice (very much criticised) of solicitation by the board is that sometimes a shareholder cannot attend a meeting and is therefore prevented from voting unless he can give a proxy to another shareholder, and very often he does not know who the other shareholders are. I suggest, therefore, that power should be given to each shareholder to appoint whomsoever he pleases to speak and vote for him in person. This would ensure voting only by those who have heard the arguments for and against a particular motion, and incidentally, would save the heavy cost of the present "blindfold" method of proxy procedure.

(4) *Share Transactions by Directors and Officers.*

Shareholders would like to feel confident that advantage is not taken to their detriment of advance knowledge of accounts and dividend intentions. Dealings should therefore be prohibited by directors and officers otherwise than in their own name and on a separate register kept for that purpose and open to the inspection of all shareholders.

(5) *Appointment of Directors.*

In practice, this is by co-option from within rather than, as it should be, election from without by a general body of shareholders. As matters stand at present a 49 per cent. minority have no right of representation on the board. The most effective method of dealing with this undoubted grievance is to give an absolute right to any group representing 20 per cent. of the shareholders to appoint their own representative on the board. Such a power could not lead to abuse and must be beneficial.

CHARLES L. NORDON.

King William Street, E.C.4.
21st June.

Obituary.

MR. GEORGE N. GRAY.

Mr. George N. Gray, solicitor, of Perth, died recently at the age of sixty-four. He was admitted a solicitor in 1898. Mr. Gray was an ex-Moderator of the Society of High Constables and a leading member of the Unionist Association.

MR. J. W. SMITH.

Mr. J. W. Smith, solicitor, of Andover, died on Friday, 7th July, at the age of seventy-six. Educated at Harrow, he was admitted a solicitor in 1879, later practising with his father at Andover. Mr. Smith was Chairman of the Weyhill (otherwise Penton Grafton) Parish Council.

Notes of Cases.

Court of Appeal.

Elliott (Inspector of Taxes) *v.* Burn.

Lord Hanworth, M.R., Lawrence and Slesser, L.JJ.
7th July.

REVENUE—INCOME TAX—SURFACE LAND LET TO FARMER AND TAXED UNDER SCHED. A.—LIBERTY GRANTED TO LESSEES TO WORK MINERALS—RENT AND ROYALTIES PAID BY LESSEES—SUMS SO PAID NOT LIABLE TO INCOME TAX—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), Sched. A, Pt. I (1)—Pt. II, r. 7.

Appeal from Finlay, J.

The appellants let the surface of their land to a farmer at a rack rental, and income tax under Sched. A was assessed and paid. By an agreement executed in 1906 they granted to B the surface liberties required in the working of coal, and by a further agreement of 1922 they granted to B liberty to work coal under the land, the consideration being a rent of £150 a year and a royalty of 1½d. for every ton worked. For the years 1923 to 1929, inclusive, the appellants received from B sums amounting to £2,948 16s., which were paid in full, without deduction of income tax, and assessments were made on the appellant for tax on those sums. The Crown contended: (1) That the payments were profits or gains; (2) that they were not a distribution of profits to the owner of the soil or property from which the colliery owner could deduct income tax; (3) that they were not part of the annual value of the land, as already taxed under Pt. I of Sched. A, but that they came under the heading of "all other profits not before enumerated . . . arising from lands . . ." in r. 7 of Pt. II of Sched. A. The Commissioners held that the sums in question were not liable to assessment either under r. 7 or under Case III or Case VI of Sched. D, and discharged the assessments. Finlay, J., reversed their decision, holding

that they were "other profits . . . arising from lands" under r. 7. The appellants appealed. The court allowed the appeal.

Lord HANWORTH, M.R., said that the agreement with B was an agreement by which a landowner parted with his right to support. Section 1 of the Act decreed that there should be tax on all property, profits, or gains, and by Sched. A the tax was payable in respect of profits or gains from lands and hereditaments. It had been argued that r. 7 of Pt. II of the schedule swept in the sums now in question as being under the description "all other profits not before enumerated . . . arising from lands . . ." But were those sums a profit arising from land? They were really sums given to the owner of land to deter him from exercising his protective right to restrain the damage to the land. They did not arise from use of the land, but from misuser of it. The land had already paid its tax, and the sums in dispute were apart from any use of the land, and did not arise out of the land, although they might be quantified by the amount of minerals extracted. The Crown had not shown that they came within the Income Tax Rules, and the appeal must be allowed, with costs.

LAWRENCE, L.J., also gave judgment allowing the appeal, and SLESSER, L.J., concurred.

COUNSEL: *Latter*, K.C., and *J. Charlesworth*, for the appellants; *The Attorney-General* (Sir Thomas Inskip), K.C., and *Reginald Hills*, for the Crown.

SOLICITORS: *Gregory, Rowcliffe & Co.*, for *Cooper and Jackson*, Newcastle-on-Tyne; *Solicitor of Inland Revenue.*

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division

In re **Lamb: Marston** *v.* **Chauvet.**

Farwell, J. 22nd June.

WILL—BEQUEST OF WAR SAVINGS CERTIFICATES—WHAT INCLUDED IN THE BEQUEST.

By his will dated 15th April, 1923, Mr. Alban Lamb, who died on 3rd February, 1932, gave his residuary estate to the defendant, Fred Lamb, and to his late wife's cousin, Agnes Ann Chauvet, he gave "all my War Savings Certificates." The question raised by this adjourned summons was whether the bequest to Agnes Ann Chauvet included National Savings Certificates held by the testator at the date of his death.

FARWELL, J., in giving judgment, said at the time of the making of his will the testator was holder of 182 War Savings Certificates, the form of the certificate being headed "War Savings Certificate," and at the same time he held 173 National Savings Certificates which were headed "National Savings Certificate." At the time of his death the testator still held 182 War Savings Certificates and a larger number of National Savings Certificates. It was argued on behalf of the legatee that the words "all my War Savings Certificates" included the National Savings Certificates as well as the War Savings Certificates. He (his lordship) was unable to accept that view. In his judgment this was a case where he found a gift in terms, a gift of a particular thing in terms which were apt to describe the particular thing given. It was not a case where there was any ambiguity as to what was meant by the words "all my War Savings Certificates." Although it might well be that the ordinary person talking about the War Savings Certificates drew no real distinction between them and the National Savings Certificates, and though in a sense National Savings Certificates were only an extension of the War Savings Certificates, that was to say, were issued under the same auspices, nevertheless it seemed to him that here there was a perfectly definite thing which the testator possessed at the time of his death and that he (his lordship) was precluded from going outside that. He was bound to hold that the gift took effect only so far as the War Savings Certificates were concerned, and could not include the National Savings Certificates which would form part of the residuary estate.

COUNSEL: *G. P. Slade; W. F. Waite; Russell Gilbert.*

SOLICITORS: *Oldman, Cornwall & Wood Roberts*, for *Charles E. Layne & Son*, Newcastle-upon-Tyne; *Arthur S. Joseph and Co.*, for *G. F. Hart*, Leeds.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

R. *v.* **Sussex Justices:** *Ex parte* **Bubb.**

Lord Hewart, C.J., Avory and Charles, JJ. 31st May.

ON-LICENCE—APPLICATION FOR SPECIAL ORDER OF EXEMPTION—HALF-HOUR EXTENSION DURING SUMMER TIME—"SUMMER TIME" NOT A "SPECIAL OCCASION."

This was a rule *nisi* calling on the justices for the Steyning Petty Sessional Division of Sussex to show cause why a writ of *certiorari* should not issue to quash a certain order, dated the 11th April, 1933, granting to Cyril Oliver Pigott, the licensee of Swiss Cottage, Shoreham-by-Sea, a special order exempting him from the provisions of the Licensing (Consolidation) Act, 1910, and the Licensing Act, 1921, relating to the hours during which intoxicating liquor might be sold for consumption on licensed premises during the following hours and on the following special occasions—namely, between 10 p.m. and 10.30 p.m. on all weekdays between the 13th April and the 9th October, 1933, thereby extending by half an hour the permitted hours on all those days. The grounds on which the rule was applied for were (*a*) that the justices exceeded their jurisdiction under s. 57 of the Licensing Act, 1910; (*b*) that there was no definition of "coastal area" by the justices. It was said that application for a special order of exemption was made on behalf of all the on-licence holders within the Petty Sessional Division of Steyning collectively and not individually. No particular names or premises were specified, nor was the case of any particular licensee considered separately on its merits. The justices decided to grant a special order of exemption to those licence-holders whose licensed premises were situated in the coastal area of the Steyning Petty Sessional Division and who might apply therefor. They came to the conclusion that for the districts in question, which were adjacent to Brighton and Hove, the whole period of "summer time" was a "special occasion."

Lord HEWART, C.J., said that he had no doubt that the rule ought to be made absolute. It seemed to him that the "summer time" period could not reasonably be held to be a special occasion within the meaning of s. 57. Not only was it not a special occasion, but the order bore all the marks of a general order with regard to the coastal parishes. He thought that the case of *Rex* v. *Butt: ex parte Brooke*, 38 T.L.R. 537, was in point; with regard to the question if *certiorari* would lie, he thought that there was clearly excess of jurisdiction. The justices were purporting to act under s. 57, but they were doing something which s. 57 did not authorise.

AVORY and CHARLES, JJ., agreed.

COUNSEL: *Norman Birkett*, K.C., and *Eric Neve*, showed cause for the licensee; *John Flowers*, K.C., and *Geoffrey Lawrence* supported the rule.

SOLICITORS: *Gates, McCully and Buckwell*, Brighton; *Walmsley and Stansbury*, for *J. E. Dell and Loader*, Shoreham.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

ERRATUM.

Wemyss Coal Co., Ltd. v. *Haig.*

In our report of the above case which appeared in the issue of 8th July, the solicitors appearing on behalf of the respondent were erroneously stated to be H. S. L. Pollak. We desire to point out that the name of the firm in question is Hy. S. L. Polak & Co., and not H. S. L. Pollak.

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Banquet to His Majesty's Judges.

The LORD MAYOR, Sir Percy Greenaway, entertained His Majesty's Judges to a banquet at the Mansion House on the 3rd July. After the company had honoured the loyal toasts, the Lord Mayor proposed the health of the Lord High Chancellor, complimenting Lord Sankey on the salutary legal changes which he was bringing into concrete form. The New Procedure Rules were working admirably and had greatly accelerated the hearing of cases. The Long Vacation had been considerably shortened, without any corresponding increase in the salaries of the judges, who shared with Ministers the unenviable distinction of being insufficiently remunerated.

Lord SANKEY, in reply, spoke of his pleasure in dining once more in the Mansion House with the Lord Mayor and Lady Mayoress. It was, he said, scarcely necessary to testify in the City to the great affection in which they were held on all sides, and the universal admiration which was felt for the way in which they carried out their task. The year was a memorable one, in which a Select Committee was sitting on the new Constitution of India, and a World Economic Conference was assembled. During the past year the personnel of the Bench had not witnessed many changes, but the recent unfortunate vacancy in the King's Bench Division had been filled by the appointment of Mr. Justice Atkinson, who was well known in London, on the Northern Circuit and in the House of Commons. The Lord Chancellor welcomed him to the Bench, and hoped that his tenure of office would be long and happy. He paid tribute to retired judges who still rendered useful public service, and stressed the obligation of the country to the County Court judges, who performed a difficult and arduous task to the general satisfaction. One of the delegates to the Economic Conference had told him that in his country the highest judges received the least remuneration, their prestige being so great as to make up for the deficiency. Speaking as Lord Chancellor, he saw grave disadvantages in the system. (Laughter.) Nevertheless, the salaries of the County Court judges, who year after year had more responsible duties placed upon their shoulders, were very inadequate, and he hoped that they would be the first to receive consideration.

The New Procedure Rules were working smoothly and efficiently. Lord Hanworth's Committee had issued an interim report; part of their recommendations had already been included in new Rules and another part would shortly be enshrined in legislation. Lawyers lived and largely relied on practice and precedent, and the Lord Chancellor said that he could quite understand why the senior members of the profession disliked any change in the system in which they had grown up and to which they owed their success. He shared that feeling, but preferred to steer a middle course between those who desired to proceed too fast with legal reform and those who did not desire to move at all. Times changed, and lawyers, like other people, must accommodate themselves to change. The Long Vacation would end this year on 30th September. One of his oldest friends had asked him whether the assizes could not start a fortnight earlier. He hoped that within the next twelve months there would be some modification of the Circuit system, possibly by arranging to hold at least one session of assizes in each of the assize towns but no longer insisting on the expensive and tedious process of visiting each town two or three times.

The LORD MAYOR then proposed the health of His Majesty's Judges.

He said that the best test of the freedom of any country was the method by which justice was administered in it. The British administration of justice was incomparably the best in the world, and at no period had the Bench of England been maintained by a more expert, practical and humane body of judges than those of to-day, in whom legal pedantry had been replaced by sound common-sense. The City was especially proud of the Central Criminal Court and of the part which the Lord Mayor and Aldermen took in maintaining its dignity. Of all the judges whom it was their privilege to receive year by year, none was more welcome than Mr. Justice Avory. The City rejoiced that he was now fully restored to health, and trusted that for many years his invaluable knowledge and dispassionate judgments might still be available to the English courts.

Mr. Justice AVORY, in reply, presumed that the honour of responding had fallen to him because he had lived longer than any of his profession. He was glad, he said, that the Lord Mayor had not used of him the expression "popular," which he had applied to the Lord Chancellor. Lord Halsbury, speaking in that hall many years ago, had said that nothing was worse for a judge to aim at than popularity. Mr. Justice Avory said that he could on this account bear with equanimity such criticisms as a cartoon in a picture paper depicting him as sitting side by side with a person named Gandhi, or such epithets as "The Sphinx of the Law Courts," or the "Acid-Drop," which had been applied to him by the daily Press. His Majesty's judges were immensely gratified by hearing in this, the centre of the Empire, that they were so deeply appreciated, but unfortunately they had performed their duties for two years under the shadow of a grievous wrong. While they had been willing to consent to a general scheme of economy, in order to bring them within that scheme they had been classified as servants of the Crown. This description was in direct violation of the Act of Settlement and subsequent statutes which were intended to ensure for all time that the judges of this country should be independent of the Crown and the Government of the day. Did they hope in vain that a National Government would find an opportunity to erase this blot from the written constitution of the country? In conclusion, he said that the Long Vacation might be shortened and many time-honoured institutions such as the Grand Jury abolished, but the judges fervently hoped that the annual banquet at the Mansion House would continue for ever.

Lord ATKIN, who proposed "The Profession of the Law," said that the company might be sure that the toast would be proposed with every sympathy towards the profession, and without any of the jibes with which the health of lawyers was sometimes proposed on other occasions. So much rested upon the manner in which the legal profession performed their duties in administering the law that the success of all reform must depend upon the goodwill and loyalty of the profession, and there was every reason to suppose that the new recommendations would be carried out in a spirit of harmony and co-operation. Economy in the administration of justice was undoubtedly desirable, but it was necessary to be careful. It was a trite observation in the City that it was difficult to reduce the cost of an article without depreciating its quality. The present gathering included, he said, a large number of judges from all parts of the Empire. The Judicial Committee of the Privy Council was the greatest legal tribunal that had ever existed or was ever likely to exist, for it administered final justice to about four hundred million British subjects, governed by some five different codes of jurisprudence. A great variety of matters, ranging from high constitutional questions to the claims of the child of a handmaid to the chieftaincy of a West African tribe, were considered by the court. Throughout all the dominions of the British Commonwealth the same spirit of justice ruled, the same principle that the judges were independent of the executive and that justice was not bought or sold. The great Prerogative Writs were valid everywhere. In one or two benighted districts with a retrograde administration it was still the law that a man was not entitled to be heard by an advocate, that an advocate was unnecessary and deleterious to the native—like a bottle of gin. Lord Atkin hoped that that blot on the otherwise universal rule of justice might soon be repealed.

Conditions were not, he continued, so easy in those remote courts as they were in England. There was a very close contact with the executive; advocacy was not always of the most effective; there were not always the libraries which were available at home. In these circumstances it was a wonderful fact that, taking the administration of justice as a whole, the traditions of this country were so worthily maintained.

The Attorney-General, Sir THOMAS INSKIP, said in reply that whenever members of the Bar were called upon to drink the health of His Majesty's Judges they did so with enthusiasm, and they were especially honoured to have their profession coupled with the Bench in the present toast. Although judges often took suitable opportunities of expressing their sentiments when an argument became unduly long or tedious, members of the Bar gladly recognised the help, forbearance and understanding which they were accustomed to receive from His Majesty's Judges. They knew that their faults would be forgiven and their mistakes kindly corrected, so that they might be of as much assistance as possible in the administration of justice.

Dr. C. E. BARRY, also in reply, remarked that this was the second Judges' Banquet during his year of office at which he

had been called upon to respond to this toast. Last year he had been made President of The Law Society on the very day the banquet had been held. This year he was to come out of office a few days afterwards. He had been told that he ought to make the same speech as he made last year; on that occasion he had delivered an oration about his early misdeeds, but he proposed not to refer to them again. He had attended a good many dinners during his year of office, and whenever a legal toast had been proposed, it was always in the form "Bench and Bar." No one admired the Bench and the Bar more than he did, but the solicitors' profession also had its place. He did not know whether that profession was popular or not, but in either case the Bench and Bar had to put up with it. When they came to it, it gave them at least as much satisfaction as they expected. He was proud, he said, that during his year of office he had been able to introduce into Parliament the Solicitors' Bill. He had always made up his mind that he would make every effort to see that Bill passed into law, and he was glad to say that it had received the Royal Assent. Defalcation would be very much diminished by its provisions, and he desired to thank the Attorney-General and Master of the Rolls for their assistance in piloting the Bill through both Houses, and Mr. Roy Bird, the member representing the Society, for his advocacy of it. The Master of the Rolls was, he said, a veritable father-in-law to The Law Society; he was always absolutely accessible and kind in every possible way, and The Law Society would not know what to do without him.

Dr. Barry recalled memories of Sir Thomas Inskip in knickerbockers, and of his father James Inskip, one of the ablest citizens that Bristol had produced. Much was said in favour of the Northern and Eastern Circuits, and it was true that the wise men came from the East, but they were stoutly rivalled by men like Sir Thomas Inskip, who came from the West. Nevertheless, he himself owed what success he had gained in practice at Bristol to his early upbringing in the City of London; and also, of course, to his Irish parentage.

THE COURT OF ALDERMEN AND THE SHERIFFS.

Lord DUNEDIN, in proposing this toast, said that when he was asked to do so he was filled with much misgiving, as his duties had never led him into contact with the City. He had turned for enlightenment to the Report of a Commission which had investigated the affairs and finances of the City in 1894, but he had recoiled bewildered by the variousness and multifariousness of the duties of the Court of Aldermen. Drawing on his own experience, he was struck by the extraordinary paucity of appeals against the judgments of that Court, and as an ordinary reader of the newspapers he gathered that in this Court justice was very well administered. If he were young again and about to be made a judge, he would wish from the good fairy a double dose of common-sense. It was because the judges of the City Courts were endowed with common-sense that their judgments had stood so firmly.

Alderman Sir GEORGE TRUSCOTT, in reply, said that the Aldermen of the City valued very much the Annual Banquet at which they met His Majesty's Judges, and also their close contact with the Judges at the Central Criminal Court. The City Magistrates were deeply grateful for the help, the advice and the experience they gained from their association with the Judges of the High Court.

Mr. Sheriff THRELFORD, also in reply, said that the Sheriffs had now been in office for nine months, and their successors had been chosen, so the warning note of their retirement had been sounded. Their life was like that of the barrister, a brief existence. The luncheons at the Old Bailey, where the Aldermen, the Recorder, the Common Sergeant, the Commissioner of Assize, and the visiting judges all met together, were happy family parties, and it was a genuine delight to the Sheriffs to preside at these functions. He paid tribute to Lord Dunedin's long and faithful service.

Lord DARLING, in proposing the health of the Lord Mayor and Lady Mayoress, remarked that the Lord Mayor had given no reason for proposing the health of the Lord High Chancellor; similarly, he himself thought it unnecessary to give any reason for proposing the health of the Lord Mayor and Lady Mayoress in the City of London.

The Lord Mayor briefly replied.

Among those present were: The Lord Chancellor, Viscount Sankey, G.B.E., and Miss Sankey, Colonel and Alderman Lord Marshall of Chipstead and The Hon. Gwendolyn Marshall, Lord Atkin, Lord and The Hon. Diana Darling, The Viscount and The Lady Dunedin, Lord Justice and the Lady Jessel, Lord Justice and the Lady Lawrence, Lord Justice and the Lady Greer, Lord Justice and the Lady Slesser, Lord and the Lady Warrington of Cliffe, Lord Wrenbury, Lord and the Lady Wright, The Hon. Mr. Justice and Lady Atkinson, The Hon. Mr. Justice Avory, The Hon. Mr. Justice and Miss Bateson, The Hon. Mr. Justice and Lady Bennett, The Hon. Mr. Justice and Lady Branson, The Hon. Mr. Justice Clauson, C.B.E., and Lady Clauson, The Hon. Mr. Justice and Miss Catherine Du Parcq, The Hon. Mr. Justice and Lady Horridge, The Hon. Mr. Justice and Lady Luxmoore, The Hon. Mr. Justice and Lady MacKinnon, The Hon. Mr. Justice and Lady Maugham, The Hon. Mr. Justice and Lady Rigby Swift, Sir E. Tindal Atkinson, K.C.B., C.B.E., and Miss Atkinson, Alderman Sir Charles and Lady Batho, The Hon. Sir J. W. and Lady Beaumont, Alderman Sir Frank and Lady Bowater, Sir Vansittart Bowater, Bt., M.P., and Lady Bowater, Alderman Sir Alfred Bower, Bt., and Lady Bower, Alderman Sir George Broadbridge, Sir William and Lady Burton, Sir Rollo F. and Lady Graham Campbell, Sir Percival and Lady Clarke, Alderman Sir William and Lady Coxen, The Hon, Sir G. C. Deane, Sir Henry Dickens, K.C., and Lady Dickens, Alderman Sir Harold Downer, LL.B., and Lady Downer, Lady Elphinstone, Sir H. Seymour and Lady Foster, Sir William and Lady Hansell, Sir Patrick and Lady Hastings, The Hon. Mrs. E. J. Hawke, The Hon. Sir B. H. and Lady Heald, The Rt. Hon. Sir Thomas Inskip, K.C.M.G., and the Lady Augusta Inskip, Sir Joseph and Lady Kemp, Alderman Sir Stephen Killik, Sir Walter and Lady Greaves-Lord, Sir Philip and Lady Macdonell, The Hon. Sir M. F. J. and Lady McDonell, The Hon, Sir William and Lady Murison, Sir Francis and The Hon. Lady Newbolt, Sir John Pakeman, C.B.E., The Hon. Sir H. G. and Lady Pearson, The Hon. Sir J. S. and Lady Rae, Sir G. C. Rankin, Sir R. Sennett, C.C., and Lady Sennett, The Hon. Sir C. Terrell, Judge Sir Alfred Tobin, K.C., Alderman Sir George Wyatt Truscott, Bt., Lieut.-Col. Sir Hugh Turnbull, K.C.B., and Lady Turnbull, Alderman Sir Percy and Lady Vincent, Sir Ernest Wild, K.C., and Lady Wild, Alderman Sir George and Lady Wilkinson, Bishop Golding Bird, Mr. Alderman and Sheriff and Mrs. Collett, Lieut.-Col. and Alderman J. D. Laurie, Mr. Alderman and Mrs. Pollitzer, Mr. Alderman and Mrs. Twyford, Mr. Justice H. A. Brown, Mr. Justice J. Coldstream, C.C., Judge and Mrs. Shewell Cooper, Mr. Justice and Mrs. Cornish, Mr. Justice A. B. Howes, Mr. Justice and Mrs. G. H. B. Jackson, Mr. Justice James, Mr. Justice and Mrs. M. A. Khan, Mr. Justice and Mrs. Kisch, Mr. Justice and Mrs. R. MacIlwaine, Mr. Justice E. J. Macquarrie, Mr. Justice and Mrs. E. M. Nanavutty, Mr. Justice and Mrs. C. M. Nair, Mr. Justice and Mrs. A. G. Pullan, Mr. Justice and Mrs. H. D. Reilly, Mr. Justice and Mrs. A. C. Robinson, Mr. Justice J. C. Thorne, Mr. Justice Thorne, Mr. Justice and Mrs. Webber, Judge Cecil Whiteley, K.C., D.L., Mr. Norman Birkett, K.C., and Mrs. Birkett, Mr. J. D. Cassels, K.C., and Mrs. Cassels, Mr. Holford Knight, K.C., M.P., and Mrs. Holford Knight, Dr. Charles E. Barry, The Rev. W. P. and Mrs. Besley, Col. R. J. Blackham, C.B., C.M.G., D.S.O., C.C., Mr. Deputy Champness, Mr. E. R. Cook, C.B.E., and Mrs. Cook, Mr. and Mrs. Wilfred Dell, Mr. and Mrs. Everard Dickson, Capt. G. S. Elliston, M.C., M.A., M.P., C.C., Mr. Deputy King Farlow, M.A., Mrs. W. W. Green, Mr. J. G. and Miss Hay Halkett, Mr. A. King Hamilton, Mr. Deputy Under-Sheriff and Miss Jennings, Mr. A. Charles Knight, J.P., C.C., and Mrs. Knight, Professor and Mrs. Langfeld, Mr. A. Pragnell, J.P., C.C., and Lady Pragnell, Mr. Under-Sheriff Stephen and Mrs. Price, The Rev. E. St. G. Schomberg, J.P., and Mrs. Schomberg, Mr. Deputy Smyth, Mr. W. Spyer, J.P., and Mrs. Spyer, Mr. Herbert S. Syrett, C.B.E., LL.B., and Mrs. Syrett, Mr. Deputy and Mrs. A. H. Teuten, Mr. Sheriff Threlford, Mr. Deputy and Mrs. Vine, Mr. W. J. Waldron, J.P., and Mrs. Waldron.

The Law Society.

ANNUAL GENERAL MEETING.

Dr. C. E. BARRY, the retiring President, took the chair at the annual general meeting of this Society held on the 7th July at Bell Yard. In proposing the adoption of the report, he expressed the great regret of the Society at the death within the last fortnight of their old friend Dr. Coley, for many years a member of Council. Dr. Coley had been one of those men, he said, who give up their lives more or less to the law. He had come from the provinces and took a great interest in everything associated with provincial meetings and with legal education.

The membership of the Society during the current year had increased by nearly 200, a fact which refuted the suggestion that solicitors did not appreciate The Law Society. The profession, he thought, realised that without The Law Society the position of solicitors would be very different. During the past year the President had been nominated under Act of Parliament as one of the committee of five appointed to choose the directors of the London Transport Board, and

had been able to attend every effective meeting. The President was also an *ex-officio* member of the Dominions Students' Trust. These appointments showed that the Society was becoming more and more recognised by the powers-that-be. Lord Hanworth's Business of Courts Committee, on which the Society was represented by Sir Philip Martineau and Mr. Dowson, of Nottingham, had issued an interim report.

"Legal Aid Societies."

A subject of some controversy, continued Dr. Barry, was that of the so-called "Legal Aid Societies." The unfortunate patient in hospital after an accident was approached by a representative of one of these bodies and signed an agreement to pay 10 per cent. upon the amount recovered from the person responsible for his injuries, and subsequently gave a retainer to a solicitor to act for him. He was absolved from payment of the solicitor's costs, but the arrangement was a very bad one for the profession and amounted to a serious scandal. The Council had arranged schemes for different hospitals, commencing with Folkestone and now including the Middlesex County Council hospitals and some at Bristol and Manchester. Patients would be warned against these societies and would be provided with a roll of solicitors' names from which they could choose an adviser. They would not have to pay the 10 per cent. and would probably receive much better advice. In a great number of running-down cases the plaintiff was not successful and had to pay costs. The Council were about to discuss the matter with representatives of the London voluntary hospitals and would take other steps—if necessary, by legislation—to do away with the practice.

No further alteration had been made in the provision for supplying police reports of accidents. The information that solicitors were now able to obtain was entirely inadequate. There seemed to be no reason why, when the question of criminal proceedings had been eliminated, solicitors should not be able to obtain from the police the statements of the witnesses taken at the time. The Council were still hopeful that an alteration might be made in the arrangements.

The Council had requested that more London solicitors should send in their names as willing to act for poor persons. The provinces had responded much better, and it was hoped that the London profession would follow their example.

Members of the Society had received some little time ago a circular from Mr. C. L. Nordon. The matters referred to in that circular were receiving and would continue to receive the attention of the Council.

The Solicitors Act.

This measure, said Dr. Barry, was an old friend—if friend it could be called. He had been a member of the committee which had sat in 1900 under the chairmanship of the late Mr. Manisty, and of which the great Sir George Lewis had been a member; and also of the committee which had sat under the late Mr. Dowson in 1907. It was obvious, therefore, that the question had been deliberated for a sufficient time. The President summarised the history of the new measure, which, he said, had received the Royal Assent within the last ten days. The thanks of the Society were due to a member of the profession, Mr. Roy Bird, who piloted the Bill through the Commons; to the Attorney-General for his sympathetic assistance with certain controversial clauses, especially concerning the banks; and to Lord Hanworth for his consideration in going out of his way to pilot the Bill through the House of Lords.

The rules which the Council had drafted under the Act were very simple. It had not been possible to publish them until the Bill was passed, but they had immediately been circulated to the provincial societies and inserted in the three legal weeklies on the Saturday and in the *Gazette*, which went to all members, on last Tuesday. The Council could, therefore, not be accused of keeping back the rules or of procrastinating in any way in their publication. The Council wanted the comments of solicitors, and desired every member of the Society to send in his suggestions. They did not claim that these rules were perfect, nevertheless, the ultimate responsibility must rest upon them, in conjunction with the Master of the Rolls. The Act came into force on 1st January, but it was proposed that the rules should not come into force for six months after the Master of the Rolls had given them his approval. This would allow every member an opportunity of adjusting his accounts as far as was necessary. Members were requested to send in their comments not later than the end of November.

Mr. Hargreaves proposed a vote of thanks to Mr. H. G. Williams, M.P., for introducing into Parliament the new Bills of Exchange Act 1882 (Amendment Act, 1932). By removing an anomaly of draftsmanship, the measure made it possible for solicitors to complete a purchase anywhere by asking their bank to give a draft on themselves at the place where they desired the money to be paid. The President seconded the motion, subject to an amendment that the name of Mr. Hargreaves be added to that of Mr. Williams. This was carried unanimously.

Mr. Bailey (Lowestoft) doubted whether London solicitors knew the extent to which country solicitors suffered from undercutting. He asked whether the Council were going to provide the instant and specific remedy for which the evil called.

Mr. H. S. Syrett complained that the report passed too quickly over the activities of the Lord Chancellor's Education Committee. This body was overloaded with professors, members of the Bar and others, and the Society was only represented by one member. Now that the activities of lawyers were considered by a large section of the public not to be all they should be, the Council should take care that this committee did not face them suddenly with some proposal before they had had time to consider the matter.

He asked whether another meeting of members would be held before the rules were finally handed over to the Master of the Rolls. The Council did not, he declared, always appreciate the position of the small man up and down the country who was not able to keep a staff like that of a large firm.

The President, in reply, asked for suggestions of members to deal with cases of undercutting. A committee of the Council had, he added, been sitting to discuss alterations in the subjects and methods of examination of students, and would shortly report. Mr. Garrett, the representative on the Lord Chancellor's Committee, had made a long statement of the views of the Council and could be called upon to give evidence before the committee.

He could not say whether the rules would be settled before the January meeting of the society, but the Council wanted to settle them as soon as possible. He reminded Mr. Syrett that they could not be settled by a committee of 10,000.

Mr. Bailey complained that it was impossible to get anything done for a poor person under six weeks, and asked whether something could not be done more quickly than that.

The President referred him to the Poor Persons Committee.

Mr. Barry O'Brien declared that the Solicitors Act was not an old friend of his and never would be; that he disliked it just as much as he had three or four years ago. Nevertheless, it was necessary to accept defeat as well as victory, and now the Bill had become law he would do all in his power to work it loyally. Many suggestions would be sent to the Council on the rules, but members present to-day would not have the advantage of knowing what these criticisms were, and possibly never would know. Alterations might be made by the Council which would not please members who agreed with the draft as it stood.

Mr. Hornby hoped that the Council would consider carefully Mr. Nordon's remark about lump sum charges. He considered that the present position whereby the client could re-open a lump sum charge when the costs came out at considerably more than the amount agreed on, whereas the solicitor could not, was wholly unfair.

The President congratulated Mr. O'Brien on dying so gracefully in the last ditch, and assured him that no serious alterations of principle would be made in the rules, but only amendments of detail.

Mr. T. W. Wood-Roberts asked for a special meeting of the Society to consider the alterations. He suggested that at least twenty members present would say by show of hands that they desired a meeting. (Applause.)

Mr. Pickford, however, definitely turned the balance of opinion in favour of the Council's policy. He said that he spoke as a public official who would not be affected by either the Act or the rules and so was able to take an unprejudiced view. The Council had, he said, always given most courteous and careful consideration to representations made by the Court of Assistants of the City of London Solicitors Company, of which he was a member, and they would certainlyconsider all other suggestions with the same attention. No useful purpose would be served by discussing the matter in general meeting, for no finality could thus be reached. Surely all members had confidence in the Council, all of whom were practising solicitors and would not draft rules which were more onerous or irksome than was absolutely necessary.

Mr. E. A. Bell suggested that not only should the Council consider favourably the method of lump sum costs—or assessed costs—as between solicitor and client, but that a solicitor in litigation should have the right to go to the taxing master and say "Here is my bill: so much for my agony and sanguinary sweat and so much for the payments that have been made; now would you be good enough to assess the right amount?"—avoiding the irritating details which wasted time and antagonised clients. Whereas a County Court judge had power to temper the severity of a judgment

to the trembling litigant, the High Court judge had no such power. Mr. Bell hoped that the Business of Courts Committee would consider whether this discretion should not be given to the High Court bench. The unfortunate litigant in the County Court could, he continued, be taken on appeal to the Divisional Court, the Court of Appeal and the House of Lords. He hoped that the system would be remedied by eliminating either the Divisional Court or the Court of Appeal. Notwithstanding the deference with which members of the Society regarded the prestige of the House of Lords, it might be a good thing if that court were merged in the Court of Appeal. A larger number of judges sitting in the Court of Appeal would do the same amount of justice at much less expense.

Mr. Bell roundly condemned the centralisation of lunacy matters and the consequent grave delay and inconvenience, especially to receivers and relatives who had to travel to London. Since 1914 the number of cases dealt with had risen from 750 to 2,050. He suggested delegating the smaller lunacies to the County Courts. He was glad to see that the ponderous White Book, containing

" . . . The lawless science of our laws,
That codeless myriad of precedents,
That wilderness of single instances,"

was to be rigidly sub-edited in the interests of expedition and economy.

Mr. BAILEY confirmed that the Lunacy Department took a week to answer a letter and sometimes received five or six without the courtesy of an acknowledgment. He wished to propose a motion instructing the Council to consider how this crying evil could be remedied, but the President ruled him out of order. He was also frustrated in his desire to move that the Council be invited to call a special general meeting on the rules.

The PRESIDENT said that the Council would consider the decentralisation of lunacy matters. He did not know why lunacy was centralised in London; perhaps there were more lunatics there. Appeals in general were under the consideration of Lord Hanworth's Committee. The new County Courts Bill allowed a defendant against whom judgment had been given for £20 and upwards to obtain an order for payment by instalments.

Mr. C. L. NORDON thanked the Council for their courteous reception of his circular. The President was, he said, far too good a sportsman to complain that members who wanted reforms occasionally adopted the tactics colloquially known as body-line bowling. If he found it necessary at times to obstruct the wicket of progress with his genial frame, he could not reasonably complain if one or two balls got up and bumped. Nevertheless, the Council had shown that it had the cause of reform as much at heart as Mr. Nordon's supporters. He praised the report faintly, but not to the point of damnation, in the words of the dramatic critic, " For those who like that sort of thing, that's just the sort of thing they like." The lamentable publicity of the Solicitors Act was harming the profession every day in its prestige and pocket. Business which used to go to the trustee solicitor was now going to the banker, the accountant, the patent agent, and even the estate agent. The solicitors were supposed to be a learned profession. They had to know 20,000 pages of statute law, and ought not to be reduced to the degraded status of mere scriveners. They were the Cinderella of the law; they had to sweep up and clear away the untidy mess made by the legislators; and if they overlooked anything of that untidy mess they were responsible to the uttermost farthing for the consequences. Nevertheless, owing to the archaic system which presupposed that they knew the law, they were not allowed to charge anything for research and study; they had therefore to pile up long files of unnecessary documents in order to give the taxing master some evidence of what they had done, when the justice of the case required that they should put very little into writing at all. If the solicitor was the Cinderella, and the Master of the Rolls was, as Lord Hanworth claimed, the fairy godmother, who was the cruel stepmother and who were the ugly sisters?

Mr. C. H. MAY asked whether the rules prohibited a solicitor from paying out of his client's account, for the purchase of property, moneys in excess of the amount standing to the credit of that particular client. (The PRESIDENT: Yes.) If a solicitor were allowed to pay one client's money to another, the whole object of the Act would be defeated. The wording of the rule was a bad example of Parliamentary draftsmanship. It was not clear whether " such particular client " was only " a particular client " referred to, or whether he included " a client," and " the client." The subject might well be set at the next examination of articled clerks.

COSTS OF LEASES.

Mr. SWAYNE moved, and Mr. GRIFFITH seconded, a motion—

" That it is desirable that, instead of both the lessors' and lessees' costs of a lease having to be paid by the lessee as at present, the cost should be pooled and divided between the parties equally, and that the Council be requested to consider the desirability of taking such steps as may be possible to give effect to this alteration in the present practice."

This motion was accepted by the President on behalf of the Council, and carried by a fair majority.

Sir REGINALD LANE POOLE was elected President and Mr. BLAKER Vice-President of The Law Society for the coming year.

Mr. MORGAN, in seconding the adoption of the accounts, pointed out that the grant from the Government for poor persons' cases was more than absorbed by the sums remitted to the Poor Persons' Committees of the provincial law societies, and by the London expenses. In the year 1926, 541 cases had been initiated; in the year ending March, 1932, there had been 1,063 deposits and 1,182 payments had been made. The figures of the country committees showed a similar growth, which testified to the great services performed by the profession. On the suggestion of Mr. Sprigge, he agreed that the accounts should in future be arranged to show as a separate item the deposits made on behalf of divorce for poor persons.

The members of the Council present were: Dr. C. E. Barry, Mr. Bateson, Mr. Bischoff, Mr. Blaker, Mr. Botterell, Mr. Branson, Mr. Collins, Mr. Dashwood, Sir Robert Dibdin, Mr. Drake, Mr. Farmer, Mr. Garrett, Mr. Gibson, Mr. Gillett, Mr. Haldane, Sir Reginald Lane Poole, Mr. Holme, Mr. Holmes, Mr. Longmore, Sir Philip Martineau, Mr. May, Lieut.-Colonel Maynard, Mr. Morgan, Mr. Morrison, Mr. Mortimer, Mr. Padmore, Mr. Pinsent, Mr. Pott, Sir Harry Pritchard, Mr. Scott, Mr. Smart, Mr. Francis Smith, Colonel Mackenzie Smith, Sir Robert Welsford, and Mr. Woodhouse.

FINAL EXAMINATION.

The following candidates (whose names are in alphabetical order) were successful at the Final Examination held on the 12th and 13th June, 1933:—

Cyril John Milford Abbott, LL.M. Sheffield, Kenneth Edward Allanson, Walter Charles Anderson, LL.B. Liverpool, Lawrence Montague Anekstein, Herbert Reginald Ashley, Herbert Thomas Atkins, John Holroyd Bairstow, B.A., LL.B. Cantab., William Henry Ritson Barker, Cyril de Beausire Barnard, B.A. Cantab., Ronald Frank Barnard, James Gordon Barr, B.A., LL.B. Cantab., John Mayman Barton, Thomas Frederick Barton, B.A. Cantab., William Hubert Bayliff, Harold Benjamin, B.A. Oxon, Thomas William Bigge, B.A. Cantab., Reginald Clarence de Montmorency Blum, Godfrey Rowland Bolsover, Ronald Scott Lawrance Bowker, B.A. Oxon, Alfred Charles Bradbury, Arnold Brewer, LL.B. Manchester, William Francis Broadbent, M.A. Oxon, Roger Morrison Brooks, Guy William Walker Bunting, B.A., LL.B. Cantab., Edward James Henderson Burnett, Patrick Maynard Warren Butler, B.A. Oxon, Harold Button, John Smith Byrom, Philip Roland Cash, LL.B. Sheffield, Arthur Stephen Cawson, Gilbert Chatterton, Alan David Clark, Derek Frank Sherwell Clogg, B.A., LL.B. Cantab., George Clough, Charles Leonard Winterforde Codrington, B.A., LL.B. Cantab., Cæsar Gordon Saville Cohen, Charles Clayton Croggon, B.A. Cantab., John Clemens Crothers, B.A., Cantab., John Herbert Anthony Crundell, Owen Glyndwr Davies, Abraham Herman Davis, Edward Dean, LL.B. Leeds, James Louis Christian Dilcock, LL.M. Liverpool, Francis Bernard Dineen, LL.B. Birmingham, John Hubert Dunk, LL.M. Sheffield, Leslie Stanley Duplock, Henry Adrian Greenhill Durbridge, B.A. Oxon, John Basil Edwards, B.A. Oxon, Henry Chandler Ellis, B.A. Cantab., Leslie Ernest England, Peter Adie Evans, B.A., LL.B. Cantab., Howard Miller Everett, Douglas Eric Gyselman Fearn, Norman Trevor Fedrick, LL.B. London, Eric Francis James Felix, B.A., LL.B. Cantab., Frank Field, Kenneth Desmond Findeisen, B.A., B.C.L. Oxon, Edward Randolph Footring, LL.B. London, Samuel Forshall, B.A. Cantab., Neil Gordon Forster, Ernest Marshall Foster, B.A. Oxon, Philip David Forsyth, B.A. Cantab., Robert Edward France-Hayhurst, George Gordon Fraser-Smith, Charles Maurice Wainewright Sandford Freeman, M.A. Oxon, Samuel Edward Furey, LL.B. Sheffield, Edward John Oliver Gardiner, LL.B. London, Joseph Anthony Garnett, Edward Martin Gaunt, LL.B. Manchester, Gaston Denis Gilmore, Clifford Roy Glenny, Joseph Humber Glover, David Henry Godkin, Thomas Cecil Gouldsmith, Albert Edward Charles Graves, LL.B. London, Denis Robertson Green, B.A., LL.B. Cantab., Horace Norman Green, M.A. Cantab., Charles Henry Richards Grimes, B.A., LL.B. Cantab., John Stapleton Gwatkin, B.A. Oxon, Edward Croft Hackett, Richard de Zouche Hall, B.A., LL.B. Cantab., Thomas Arthur Hall, John Philip Halpin, LL.B. London, Eric Creighton Halton, Frederick Robin Hamp, Kenneth Anderson Harker, LL.B. Leeds, Douglas Hazard Harris, Frederick Winston Harrison, B.A., LL.B. Cantab.,

Wilfred William Hawkins, Robert Henry Cowell Herron, Frederic Long Hetley, B.A. Cantab., Robert Peverell Hichens, B.A. Oxon, Harold Redmore Hodge, John William Horsford Hodgson, Roger Donald Houghton, B.A. Oxon, David Gwynydd Howell, B.A. Oxon, Merlin Howell, LL.B. Cantab., LL.B. Wales, Philip Brown Hunter, Denis Charles Hutchison, B.A. Cantab., Henry William Walter Huxham, LL.B. London, Richard Hoyle Jackson, B.A., LL.B. Cantab., Howard Sydney Johnson, Cecil Hugh Eversley Jones, B.A. Oxon, Hopkin Alfred Llewellyn Jones, B.A. Cantab., Robin Ellis Waley Joseph, B.A. Oxon, George Orchard Joyce, Frederick Ronald Kentfield, B.A. Oxon, Thomas Kenyon, Grindy Clement Kirk, Charles Kleiman, LL.B. Leeds, Joseph William Knighting, Leslie Gabriel Landau, B.A. Oxon, Ralph Herbert Lane, Arthur Cuthbert Langham, Nathaniel William Lawrence, B.A. Oxon, Harold Somerville Lees, B.A. Cantab., Laurence Isidore Legg, Edward Newton Lever, LL.M. Liverpool, Leslie Sinclair Lewis, B.A. Cantab., Philip Henry North Lewis, Frank Norman Walter Lockyer, LL.B. London, Harry Longley, Raymond Clarence Lyon, LL.B. London, Charles Donald McDonald, Eardley Harold Victor McDougall, Patrick MacMahon Mahon, Stanley Grenville March, John Marsh, B.A. Cantab., Richard Jewson Marshall, Robin Marie Marcus Mere, B.A. Oxon, William Frederick Merry, John Ireland Miller, John Hugo Minor, Arthur Morgan, Herbert Trevor Morgan, Colin James Morton, LL.B. Sheffield, Charles Elvin Goodman Mumby, B.A. Cantab., Joseph Rowntree Naish, B.A. Cantab., Brenda Mary Nevill, George Stonehouse Nicholson, Roydon Joseph Nicholson, B.A. Cantab., Robert Henry Morton Ody, James Ogden, Frederick William Beston Pacey, B.A. Oxon, Rodney Graham Page, LL.B. London, Victor Geoffrey Parker, LL.B. Birmingham, Thomas Somerville Pascall, Alastair Rose Paterson, B.A. Cantab., Frederick Burton Pearce, Roland Neville Pepper, Denys Montagu Roper Piesse, John Kenworthy Platt, Robert Gillbee Plowman, Ernest Marquiss Pullen, B.A. Oxon, Montague Rakusen, LL.B. Leeds, William Francis Willett Ram, Alan Richardson Read, Douglas William Riley, Thomas Blackburn Roberts, LL.B. Liverpool, Benjamin Robinson, Lawrence Patrick Redmond Roche, B.A. Oxon, William Richards Rogers, Isaac Rosenbaum, LL.M. London, Theodore Burton Fox Ruoff, Leonard Sainer, LL.B. London, John Algernon Waring Sainsbury, M.A., LL.B. Cantab., Edgar Martyn Sanders, B.A. Cantab., Stephen Ernest Saville, LL.B. Manchester, Edward Syer Saywell, Denis Arnot Schierwater, William Scrivens, LL.B. Liverpool, Asher Lewi Shane, Harold Walter Sharp, Robert Owen Sherrard, George Francis Simmonds, B.A., LL.B. Cantab., Frederick Harry Sketchley, Geoffrey Leslie Smith, George Edward Smith, Philip Thomas Francis Smith, John Smyth, B.A. Cantab., Oswald Barber Sneath, B.Sc. London, Leonard Wellby Snow, B.A. Oxon, Albert Edward Frank Steel, Alfred Peter Steele-Perkins, B.A., LL.B. Cantab., Roger Edward Stenning, B.A. Cantab., John Edmund Stevens, Robert Bernard Strangeways, B.A. Cantab., Frederick Percival Lake Sydenham, Charles Wilfrid Graves Taylor, B.A. Cantab., Daniel Alun Roberts Thomas, John Eric Thomas, John Frederick Thompson, B.A., B.C.L. Oxon, Charles Selby Tilly, Edward Mallinson Tregoning, B.A., LL.B. Cantab., Miles Turnell, Oliver Russ Turner, Gordon Leonard Tanat Walker, John Shiel Wall, William Walsh, Norman Ward, LL.B. Liverpool, John Herbert Warren, David Louden Watts, William Edmund Self Weeks, B.A. Cantab., Digby Milward Weightman, B.A. Oxon, Nicholas Welch, M.A., LL.B. Cantab., John Hartley Weston, LL.B. Manchester, Harold Gardener Wheeler, James Whiteside, Christopher John Wilkinson, Dorothy Joan Williams, Hubert Glyn Williams, Richard Llewellyn Williams, B.A., LL.B. Cantab., Vivian Jones Williams, Francis Eden Wilson, B.A. Oxon, Charles Edward Wood, Edith Woodforth, Edward Shirley Blennerhassett Woolmer, B.A. Oxon, Roland Guy de Lancy Wormell, Edward Leslie Wright, Charles Trafford Wynne.

No. of Candidates, 389. Passed, 220.

The Council have awarded the following Prizes: To John Edmund Stevens, who served his Articles of Clerkship with Mr. Alfred Edwin Ifor Curtis, of the firm of Messrs. Alfred Curtis & Son, of Neath, the Thomas Edmund Child Prize, value about £21; and to Thomas Frederick Barton, B.A. Cantab., who served his Articles of Clerkship with Mr. Maurice Woodman Emley, of the firm of Messrs. Landons, of London, the John Mackrell Prize, value about £13.

STUDENTSHIPS FOR 1933.

The Council, acting on the recommendation of the Legal Education Committee, have made the following award of five studentships of the annual value of £40 each, tenable for one year, but renewable at the discretion of the Council:—

CLASS A.

(Candidates under 19 years of age.)

Mr. Philip Asterley Jones (educated at Tonbridge School and The Law Society's School; articled to Mr. C. R. Sharman, of London).

CLASS B.

(Articled clerks having not less than three years to serve.)

Mr. Frank Edward Norman Croucher (educated at Ryde School and The Law Society's School; articled to Mr. A. G. Graves, of London).

Mr. Peter Proud (educated at Merchant Taylors' School and The Law Society's School; articled to Mr. T. Evander Evans, of London).

Mr. Richard Neville Dalton Hamilton (educated at Westminster School and The Law Society's School; articled to Mr. G. R. Crouch, of Aylesbury).

Mr. Joseph Gold (educated at Raine's Foundation School; articled to Mr. E. D. K. Busby, of London).

Each studentship is awarded on the condition that the holder proceeds and continues to pursue a course of studies for a law degree.

Parliamentary News.

Progress of Bills.

House of Lords.

Agricultural Marketing Bill.
Read Third Time and passed. [11th July.

Blind Voters Bill.
Agreed to. [6th July.

Calvinistic Methodist or Presbyterian Church of Wales Bill.
Agreed to. [11th July.

Cancer Hospital (Free) Bill.
Agreed to. [6th July.

Colne Corporation Bill.
Commons Amendments agreed to. [6th July.

Commercial Gas Bill.
Read Third Time. [12th July.

Cotton Industry Bill.
Reported, without amendment. [11th July.

Education (Necessity of Schools) Bill.
Commons Amendments agreed to. [12th July.

Electricity (Supply) Bill.
Read First Time. [11th July.

Fire Arms and Imitation Fire Arms (Criminal Use) Bill.
Read First Time. [11th July.

Gas Light and Coke Company Bill.
Reported, with Amendments. [6th July.

Knutsford Light and Water Bill.
Read Third Time. [6th July.

Leeds Corporation Tramways Provisional Order Bill.
Read Third Time. [6th July.

Local Government and Other Officers' Superannuation (Temporary Provisions) Bill.
Read First Time. [6th July.

Mablethorpe and Sutton Urban District Council Bill.
Committed. [11th July.

Metropolitan Police Bill.
Read Second Time and committed. [6th July.

Ministry of Health Provisional Order Confirmation (Ely, Holland and Norfolk) Bill.
Read Third Time. [6th July.

Ministry of Health Provisional Order Confirmation (Warwick) Bill.
Reported, without amendment. [6th July.

Ministry of Health Provisional Order Confirmation (Wath, Swinton and District Joint Hospital District) Bill.
Read Third Time. [6th July.

Ministry of Health Provisional Order Confirmation (Wellington, Salop) Bill.
Committed. [11th July.

Nottinghamshire and Derbyshire Traction Company (Trolley Vehicles) Provisional Order Bill.
Reported, without amendment. [6th July.

Private Legislation Procedure (Scotland) Bill.
Read Second Time. [11th July.

Rent and Mortgage Interest Restrictions (Amendment) Bill.
Read Third Time. [12th July.

Road Traffic (Compensation for Accidents) Bill.
Committed. [6th July.

Slaughter of Animals Bill.
Read Second Time. [6th July.

Southern Railway Bill.
Read Third Time. [12th July.

Summary Jurisdiction (Appeals) Bill.
Read Third Time. [6th July.

House of Commons.

Adelphi Estate Bill.
Read Second Time and Committed. [12th July
Barking Corporation Bill.
Reported, with Amendments. [11th July.
Dearne District Traction Bill.
Read Third Time. [12th July.
Dundee Harbour and Tay Ferries Order Confirmation Bill.
Read Third Time. [12th July.
East Hull Gas Bill.
Reported, with Amendments. [11th July.
London Midland and Scottish Railway Order Confirmation Bill.
Read First Time. [11th July.
The Maldens and Coombe Urban District Council Bill.
Read Second Time and Committed. [10th July.
Mersey Tunnel Bill.
Lords Amendments agreed to. [7th July.
Ministry of Health Provisional Order Confirmation (Chepping Wycombe) Bill.
Read Second Time. [12th July.
Ministry of Health Provisional Order Confirmation (Mid-Glamorgan Water Board) Bill.
Read Second Time. [12th July.
Rhondda Passenger Transport Bill.
Reported, with Amendments. [11th July.
Road and Rail Traffic Bill.
Reported, with Amendments. [11th July.
Road Traffic (Amendment) Bill.
Presented. [7th July.
Sidmouth Urban District Council Bill.
Lords Amendments agreed to. [7th July.
Torquay and Paignton Tramways (Abandonment) Bill.
Read Third Time and Passed, with Amendments. [10th July.
Trout (Scotland) Bill.
Lords Amendments to be considered. [12th July.
Worksop Corporation Bill.
Read Third Time, and Passed, with Amendments. [7th July.

Rules and Orders.

THE RULES OF THE SUPREME COURT (No. 2), 1933. DATED JUNE 28, 1933.

We, the Rule Committee of the Supreme Court, hereby make the following Rules :—

1. The following paragraph shall be inserted at the end of Rule 1 of Order XI and shall stand as paragraph (i) in that Rule :—

" or (i) The action is one brought under the Carriage by Air Act, 1932." (22 & 23 Geo. 5, c. 36.)

2. The following Rule shall be inserted after Rule 8A of Order XI, and shall stand as Rule 8B of that Order :—

" 8B.—(1) Where, for the purpose of an action under the Carriage by Air Act, 1932, and the Convention therein set out, leave is given to serve a notice of a writ of summons upon a High Contracting Party to the Convention other than His Majesty, the provisions of this Rule shall apply.

" (2) The notice shall specify the time for entering an appearance as limited in pursuance of Rule 5 of this Order.

" (3) The notice shall be sealed with the seal of the Supreme Court for service out of the jurisdiction, and shall be transmitted to His Majesty's Principal Secretary of State for Foreign Affairs, together with a copy thereof translated into the language of the country of the defendant, and with a request for the further transmission of the same to the Government of that country.

" (4) The request shall be in Form 10AA in Appendix A, Part I, with such variations as circumstances may require.

(5) The party bespeaking a copy of a document for service under this Rule shall, at the time of bespeaking the same, file a præcipe in Form 10B in Appendix A, Part I.

" (6) An official certificate transmitted by one of His Majesty's Principal Secretaries of State to the English Court certifying that the notice was delivered on a specified date to the Government of the country of the defendant shall be deemed to be sufficient proof of service and shall be filed of record as, and be equivalent to, an affidavit of service within the requirements of these Rules in that behalf.

" (7) After entry of appearance by the defendant or, if no appearance is entered, after the expiry of the time limited for appearance, the action may proceed to judgment in all respects as if the defendant had for the purposes of the action waived all privilege and submitted to the jurisdiction of the Court.

" (8) Where it is desired to serve or deliver a summons order or notice in the proceedings on the defendant out of the jurisdiction, the provisions of this Rule shall apply with such variations as circumstances may require."

3. The following Rule shall be inserted in Order XIII after Rule 9 and shall stand as Rule 9A of that Order :—

" 9A. In any case to which Rules 3 to 8 of this Order do not apply, in which the defendant fails, or all the defendants, if more than one, fail, to appear, but in which by reason of payment, satisfaction, abatement of nuisance, or for any other reason it is unnecessary for the plaintiff to proceed with the action, he may by leave of the Court or a Judge to be obtained on summons in Chambers enter judgment for costs :

" Provided that such summons shall be filed and shall be served in the manner in which service of the writ has been effected or in such other manner as the Court or a Judge shall direct."

4. The following Rule shall be inserted after Rule 13A of Order XVI, and shall stand as Rule 14 of that Order :—

" 14.—In any action under the Carriage by Air Act, 1932, and the Convention therein set out, a High Contracting Party to the Convention who, for the purposes of that action, and by virtue of that Act, is deemed to have submitted to the jurisdiction of the Court, may, subject to and in accordance with these Rules, be made a defendant."

5. The following Rule shall be inserted after Rule 3 of Order XXXVA and shall stand as Rule 3A of that Order :—

" 3A.—(1) Where an appearance to a petition has been entered by a party named in the petition and a copy of an answer by that party has not been delivered within the time prescribed or allowed, the petitioner's solicitor may apply to the District Registrar for a search to be made in the Court Minutes.

(2) If an answer has not been filed, the District Registrar shall thereupon issue a certificate as in Form No. 6 in Appendix M, and shall file a copy thereof, which shall be in substitution for and of the same force as an affidavit of search for answer."

6. In Rule 3 of Order XXXVIII, the words " except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted " shall be omitted, and the words : " Provided that on interlocutory proceedings or with leave under Order XXX Rule 7, an affidavit may contain statements of information and belief, with the sources and grounds thereof."

7. The following Rules shall be inserted after Order XLIA and shall stand as Order XLIB.

" ORDER XLIB.

1. *Application for registration.*]—An application under section 2 of the Foreign Judgments (Reciprocal Enforcement) Act, 1933 (in this Order referred to as ' the Act ') to have a foreign judgment to which Part I of the Act applies registered in the High Court of Justice may be made *ex parte* to the Court or a Judge. (23 & 24 Geo. 5, c. 36.)

2. *Evidence in support of application.*]—(1) An application for registration shall be supported by an affidavit of the facts—

(*a*) exhibiting a certified copy of the judgment issued by the original court and authenticated by its seal and a translation of the judgment authenticated by affidavit.

(*b*) stating to the best of the information and belief of the deponent—

(i) that the applicant is entitled to enforce the judgment ;

(ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or, if the judgment has been satisfied in part, what the amount is in respect of which it remains unsatisfied ;

(iii) that at the date of the application the judgment can be enforced by execution in the country of the original court ;

(iv) that if the judgment were registered, the registration would not be, or be liable to be, set aside under section 4 of the Act.

(*c*) specifying the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of registration ;

and shall be accompanied by such other evidence with respect to the matters referred to in sub-paragraph (iii) of paragraph (*b*) or paragraph (*c*) above as may be required having regard to the provisions of the Order in Council extending the Act to the country of the original court.

(2) Where the sum payable under the judgment is expressed in a currency other than the currency of the United Kingdom, the affidavit shall also state the amount

which that sum represents in the currency of the United Kingdom calculated at the rate of exchange prevailing at the date of the judgment.

(3) The affidavit shall also state the full name, title, trade or business and the usual or last known place of abode or of business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent.

(4) Where a judgment is in respect of different matters, and some, but not all of the provisions of the judgment are such that if those provisions had been contained in separate judgments, those judgments could properly have been registered, the affidavit shall state the provisions in respect of which it is sought to register the judgment.

3. *Security for costs.*]—Save as otherwise provided by any relevant Order in Council the Court may, in respect to an application for registration order the judgment creditor to find security for the costs of the application and of any proceedings which may thereafter be brought to set aside the registration.

4. *Title of affidavit and summons.*]—The affidavit, if any, shall be intituled :—

"In the matter of the Foreign Judgments (Reciprocal Enforcement) Act, 1933, and in the matter of a judgment of the (describing the Court) obtained in (describing the cause or matter) and dated the day of 19 ."

5. *Order on application for registration.*]—(1) An order giving leave to register a judgment shall be drawn up by, or on behalf of, the judgment creditor.

(2) No such order shall require to be served on the judgment debtor.

(3) Every such Order shall state the period within which an application may be made to set aside the registration and shall contain a notification that execution on the judgment will not issue until after the expiration of that period.

(4) The Court or a Judge may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, grant an extension of the period (either as originally fixed or as subsequently extended) during which an application to have the judgment set aside may be made.

6. *Register of judgments.*]—There shall be kept in the Central Office by, or under the direction of, the senior Master of the King's Bench Division a register of the judgments order to be registered under the Act.

7. *Notice of registration.*]—(1) Notice in writing of the registration of a judgment must be served on the judgment debtor—

(*a*) if within the jurisdiction, by personal service as in the case of a writ of summons, unless some other mode of service is ordered by the Court or a Judge ;

(*b*) if out of the jurisdiction, in accordance with the rules applicable to the service of a writ of summons out of jurisdiction, save that special leave to serve out of the jurisdiction shall not be required.

(2) The notice of registration shall state—

(*a*) full particulars of the judgment registered and the order for registration ; and

(*b*) the name and address of the judgment creditor or of his solicitor or agent on whom, and at which, any summons issued by the judgment debtor may be served ; and

(*c*) the right of the judgment debtor to apply on the grounds provided in the Act to have the registration set aside ; and

(*d*) in accordance with the terms of the order giving leave to register, within what time from the date of service of the notice an application to set aside may be made.

8. *Endorsement of service.*]—(1) Within three days from the day of service or within such extended period as may, in special circumstances, be allowed by order of a judge, the notice or a copy or duplicate thereof shall be endorsed by the person serving the same with the day of the month and of the week on which service was affected, and, if the notice is not so endorsed, the judgment creditor shall not be at liberty to issue execution on the judgment without the leave of the Court or a Judge.

(2) Every affidavit of service of any such notice shall state on what day such endorsement was made.

9. *Application to set aside registration.*]—(1) An application to set aside the registration of a judgment shall be made by summons to the Court or a Judge supported by affidavit.

(2) A summons for the purpose of this Rule shall be an ordinary summons entitled in the same manner as the affidavit referred to in Rule 3 of this Order.

(3) On any such application the Court or a Judge may direct that an issue between the judgment creditor and the judgment debtor shall be stated and tried and may give such directions in relation to the trial of such issue as may be necessary.

10. *Issue of execution.*]—(1) Execution shall not issue on a registered judgment until after the expiration of the period which, in accordance with the provisions of Rule 5 (3) of this order, is specified in the order giving leave to register as the period within which an application may be made to set aside the registration, or, if an order is made extending the period so specified, until after the expiration of the extended period.

(2) If an application is made to set aside the registration of a judgment, execution shall not issue until such application has been disposed of.

(3) The party desirous of issuing an execution upon a registered judgment shall produce to the proper officer an affidavit of the service of the notice of registration and of any order made by the Court in relation to the judgment registered.

11. *Form of writ of execution.*]—In the case of a registered judgment the form of a writ of execution shall be varied as follows :—

For the words "which said sum of money and interest were lately before us in our High Court of Justice," etc., there shall be substituted the words "which said sum of money and interest were lately in..... (describing the court in which judgment was obtained)," etc., "and which judgment has been duly registered in our High Court of Justice in England pursuant to Part I of 'The Foreign Judgments (Reciprocal Enforcement) Act, 1933.'"

12. *Determination of certain questions.*]—If, whether under the Act or under this Order, any question arises whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under the foreign judgment under the law of that country, that question shall be determined in accordance with such provisions, if any, in that behalf, as are contained in the Order in Council extending the Act to that country.

13. *Certified copy of United Kingdom Judgments.*]—(1) An application under section 10 of the Act for a certified copy of a judgment obtained in the High Court shall be made *ex parte* to a Master of the Supreme Court on an affidavit made by the judgment creditor or his solicitor.

(2) An affidavit for the purposes of this Rule shall—

(*a*) give particulars of the proceedings in which the judgment was obtained ; and

(*b*) have annexed to it a copy of the writ of summons or the originating summons by which the proceedings were instituted, the evidence of service thereof upon, or appearance by, the defendant, copies of the pleadings, if any, in the proceedings, and a statement of the grounds on which the judgment was based ; and

(*c*) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds ; and

(*d*) show that the judgment is not subject to any stay of execution and that no notice of appeal against it has been entered, and whether the time for appealing has expired ; and

(*e*) state the rate at which the judgment carries interest.

(3) Where an application for a certified copy of a judgment is duly made under this Rule, there shall be issued an office copy of the judgment sealed with the seal of the Supreme Court and certified by one of the Masters of the Supreme Court as follows :—

"I certify that the above copy judgment is a true copy of a judgment obtained in the High Court in England and this copy is issued in accordance with section 10 of the Foreign Judgments (Reciprocal Enforcement) Act, 1933.

Signed.....
A Master of the Supreme Court of Judicature in England."

together with the following further certificates also under the seal of the Supreme Court and certified by one of the Masters of the Supreme Court :—

(*a*) a certificate giving particulars of the proceedings in which the judgment was obtained and having annexed to it copies of the writ of summons, or originating summons, by which the proceedings were instituted, showing the manner in which the writ or summons was served on the defendant, or that the defendant appeared thereto, and the objections made to the jurisdiction, if any, the pleadings, if any, in the proceedings, a statement of the grounds on which the judgment was based and such other particulars as it may be necessary to give to the foreign tribunal in which it is sought to obtain execution of the judgment.

(*b*) a certificate stating the rate at which the judgment carries interest.

14. *Rules to have effect subject to Orders in Council.*]—The Rules of this Order shall, in relation to any judgment, have effect subject to any such provisions contained in the Order in Council extending the Act to the country of the original court as are declared by the Order in Council to be necessary for giving effect to the agreement made between His Majesty and that country in relation to matters for which provision is made by these Rules."

8. The following amendments shall be made in Order LIIIA :—

(*a*) Paragraph (*w*) of Rule 3 and paragraph (*l*) of Rule 4 are hereby revoked.

(*b*) In Rule 7 the words " (except as hereinbefore expressly provided in the case of Patents under section 18 of the Principal Act) " shall be omitted.

9. The following Form shall be inserted and stand as Form 10AA in Part 1 of Appendix A :—

" No. 10AA.

Request to Secretary of State to Transmit Notice of Writ to a Foreign Government [O. 11 r. 8B].

The President of the Division of the High Court of Justice presents his compliments to His Majesty's Principal Secretary of State for Foreign Affairs and has the honour to enclose a notice of a writ of summons issued in an action of versus the [*insert name of the defendant High Contracting Party*] pursuant to order, out of the High Court of Justice in England, for delivery to the Government of [*insert name of the country of the High Contracting Party*] and to request that an official certificate may in due course be despatched to the English Court stating that the notice of writ of summons has been so delivered and on what date."

10. The following Form shall be inserted and stand as Form No. 6 in Appendix M :—

" *Form No.* 6.

(usual heading.)

I hereby certify that a search has this day been made in the Court Minutes of this cause to ascertain whether or not any answer has been filed by or on behalf of C.B. the respondent or E.F. the co-respondent and that an answer has not been filed by or on behalf of either of them.

Dated the day of 193 .

District Registrar."

11. In the year 1933—

(*a*) Notwithstanding anything contained in Rule 1 or paragraph (1) of Rule 4 of Order LXIII the Michaelmas sittings of the Court of Appeal and of the High Court of Justice shall commence on the 2nd day of October and the Long Vacation of the several Courts and offices of the Supreme Court shall for all purposes terminate on the 1st day of October ; and

(*b*) Notwithstanding anything contained in Rule 4 and 4A (1) of Order LXIV all summonses may be issued and pleadings may be amended delivered or filed in the Long Vacation on and after the 20th day of September in all causes or matters to which those Rules apply.

12. The following paragraph shall be substituted for paragraph (2) of Rule 20 of the Rules of the Supreme Court (No. 1) 1933, dated 2nd June, 1933 :—

" (2) These Rules shall come into operation (*a*) on the 1st day of July, 1933, in respect of actions commenced on or after that day ; and (*b*) on the 1st day of August, 1933, in respect of all other actions."

13.—(1) These Rules may be cited as the Rules of the Supreme Court (No. 2) 1933, and the Rules of the Supreme Court, 1883,* shall have effect as amended by these Rules.

(2) Rules 6, 12 and 13 of these Rules shall come into operation on the 1st day of July, 1933, and the remainder of these Rules shall come into operation on the 1st day of August, 1933.

Dated the 28th day of June, 1933.

Sankey, C.	*Rigby Swift*, J.
Hewart, C.J.	*Maugham*, J.
Hanworth, M.R.	*D. B. Somervell.*
Merrivale, P.	*C. H. Morton.*
P. Ogden Lawrence, L.J.	*Roger Gregory.*
Roche, J.	

* S.R. & O. Rev. 1904, XII, Supreme Court, E., pp. 54–417 (printed as amended to Dec. 31, 1903).

The Matrimonial Causes (Amendment) Rules, 1933. Dated June 28, 1933.

We, the Rule Committee of the Supreme Court, hereby make the following Rules :—

1.—(1) Rule 11 of the Matrimonial Causes Rules, 1924,* shall be revoked and the following Rule substituted therefor :—

* S.R. & O. 1924 (No. 126) p. 1691.

" 11. Where an affidavit of service of a petition is not required by these Rules a certificate of service in the form given in Appendix No. II shall be filed in the Registry."

(2) The form given in Appendix II of the Matrimonial Causes Rules, 1924, shall be omitted and the following form substituted therefor :—

" In the High Court of Justice,
Probate Divorce and Admiralty Division (Divorce)
A.B. v. C.B. & R.S.

A sealed copy of the (supplemental) Petition dated the day of 19 and extracted from the Registry was (as amended pursuant to order dated the day of 19) duly served by the undersigned G.H. on C.B. the Respondent (*or* R.S. the Co-respondent) at on the day of ."

2.—(1) These Rules may be cited as the Matrimonial Causes (Amendment) Rules, 1933, and the Matrimonial Causes Rules, 1924, as amended,† shall have effect as further amended by these Rules.

(2) These Rules shall come into operation on the 1st day of August, 1933.

Dated the 28th day of June, 1933.

Sankey, C.	*Rigby Swift*, J.
Hewart, C.J.	*Maugham*, J.
Hanworth, M.R.	*D. B. Somervell.*
Merrivale, P.	*C. H. Morton.*
P. Ogden Lawrence, L.J.	*Roger Gregory.*
Roche, J.	

† *See* S.R. & O. 1925 (No. 74) p. 1536 and 1932 (Nos. 49, 283 and 523) pp. 1862–84.

The County Court (No. 3) Rules, 1933. Dated June 28, 1933.

1. These Rules may be cited as the County Court (No. 3) Rules, 1933, and shall be read and construed with the County Court Rules, 1903,* as amended.

An Order and Rule referred to by number in these Rules means the Order and Rule so numbered in the County Court Rules, 1903, as amended.

A Form referred to by number in these Rules means the form so numbered in Part I of the Appendix to the County Court Rules, 1903, as amended.

The County Court Rules, 1903, as amended, shall have effect as further amended by these Rules.

2. Order XXIIA and Rule 3B of Order XXXIII are hereby revoked and Forms 42A (1), 42A (2), 42B and 42C are hereby revoked.

3. In paragraph (7) of Rule 13 and in paragraph (7) of Rule 20 of Order IX the words " (*or*, where the claim exceeds the sum of £50, ten clear days) " shall be omitted.

4. In Forms 22, 25, 247, 248 and 252 the following expressions shall be omitted wherever they occur :—

" [*or*, if the amount claimed exceeds £50, ten clear days] "

" [*or*, if the claim exceeds £50, ten clear days] "

" [*or*, if the claim exceeds £50, or the rent or value of the premises exceeds £50 a year, ten clear days] "

5. Notwithstanding anything contained in these Rules where an action or matter has been commenced before the 1st day of January, 1934, the provisions of Order XXIIA and Rule 3B of Order XXXIII shall apply to it, and for the purposes of any such action or matter those Rules shall continue in force and the Forms mentioned in Rule 2 and the Forms mentioned in Rule 4 including the expressions directed by that Rule to be omitted shall be used.

We the undersigned persons appointed by the Lord Chancellor pursuant to section one hundred and sixty-four of the County Courts Act, 1888,† and section twenty-four of the County Courts Act, 1919,‡ to frame Rules and Orders regulating the practice of the Court and forms of proceedings therein, having by virtue of the powers vested in us in this behalf framed the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

S. A. Hill Kelly.	*C. E. Dyer.*
T. Mordaunt Snagge.	*H. Bensley Wells.*
Barnard Lailey.	*A. O. Jennings.*

Approved by the Rules Committee of the Supreme Court.

Claud Schuster,
Secretary.

I allow these Rules which shall come into force on the 1st day of January, 1934.

Dated the 28th day of June, 1933. *Sankey*, C.

* S.R. & O. Rev. 1904, III County Court, E. p. 89 (1903, No. 629).
† 51–2 V. c. 43. ‡ 9–10 G. 5. c. 73

A UNIVERSAL APPEAL

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Wills and Bequests.

Mr. Gerald Beaumont, M.A., B.C.L., solicitor, of Woolley Moor House, Chapelthorpe, and formerly of Wakefield, Yorks, left £10,444, with net personalty £6,520.

Mr. Thomas Arnold Goodwin, solicitor, of Blundellsands, Lancs, who died on 19th April, aged eighty, left property of the gross value of £43,274, with net personalty £36,711. He left £500 to Balliol College, Oxford.

Mr. Joseph Orrell, Marylebone, barrister, left £45,513, with net personalty £44,973.

Colonel Francis William Pixley, one of His Majesty's Lieutenants for the City, a D.L. of Bucks, and a J.P. for Bucks and London, Chartered Accountant and Barrister, of Woburn, Bucks, left £23,251, with net personalty £16,280.

Mr. George Robert Hubbard, solicitor, of Canterbury, left £25,600, with net personalty £17,891.

RULES OF THE SUPREME COURT.

At the sitting of the court on Thursday, 13th July, the Lord Chief Justice of England made the following statement: The Rules of the Supreme Court require that in all actions for damages brought on behalf of an infant or person of unsound mind, the costs of the plaintiff, both as between party and party and as between solicitor and client, shall be taxed and certified by the Taxing Master, and no costs other than those so certified are payable to the solicitor for the plaintiff. These provisions apply equally, whether damages are recovered by a verdict and judgment after trial or by an order staying proceedings upon the terms of a settlement out of court. In either case there is a direction by the court that the costs of the plaintiff, both as between party and party and as between solicitor and client, are to be taxed and it is the duty of the solicitors on both sides to see that the direction is complied with. The rules and the direction are made for the protection of infants and persons of unsound mind and are imperative. It is important that it should be known that if they are deliberately disobeyed, the solicitors responsible are liable to be dealt with for contempt of court.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.		EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Non-Witness.	GROUP I. MR. JUSTICE MAUGHAM. Witness. Part II.
		Mr.	Mr.	Mr.	Mr.
July	17	Blaker	Andrews	Ritchie	Andrews
,,	18	More	Jones	Andrews	*More
,,	19	Hicks Beach	Ritchie	More	Ritchie
,,	20	Andrews	Blaker	Ritchie	*Andrews
,,	21	Jones	More	Andrews	More
,,	22	Ritchie	Hicks Beach	More	Ritchie

DATE.		GROUP I. MR. JUSTICE BENNETT. Witness. Part I.	MR. JUSTICE CLAUSON. Witness. Part II.	GROUP II. MR. JUSTICE LUXMOORE. Witness. Part I.	MR. JUSTICE FARWELL. Non-Witness.
		Mr.	Mr.	Mr.	Mr.
July	17	*More	*Blaker	*Jones	Hicks Beach
,,	18	*Ritchie	Jones	*Hicks Beach	Blaker
,,	19	*Andrews	*Hicks Beach	*Blaker	Jones
,,	20	More	Blaker	*Jones	Hicks Beach
,,	21	*Ritchie	*Jones	Hicks Beach	Blaker
,,	22	Andrews	Hicks Beach	Blaker	Jones

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement Thursday, 20th July, 1933.

	Div. Months.	Middle Price 12 July 1933.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	107	3 14 9	3 11 2
Consols 2½%	JAJO	71⅛	3 9 11	—
War Loan 3½% 1952 or after	JD	98¼	3 11 3	—
Funding 4% Loan 1960-90	MN	109½	3 13 1	3 9 1
Victory 4% Loan Av. life 29 years	MS	108½	3 13 9	3 10 6
Conversion 5% Loan 1944-64	MN	115¾	4 6 4	3 5 5
Conversion 4½% Loan 1940-44	JJ	109	4 2 7	3 1 1
Conversion 3½% Loan 1961 or after	AO	98½	3 11 1	—
Conversion 3% Loan 1948-53	MS	97½	3 1 6	3 3 5
Conversion 2½% Loan 1944-49	AO	92½	2 14 1	3 2 1
Local Loans 3% Stock 1912 or after	JAJO	83¼	3 12 0	—
Bank Stock	AO	338½	3 10 11	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	74	3 14 4	—
India 4½% 1950-55	MN	106	4 4 11	4 0 2
India 3½% 1931 or after	JAJO	78	4 9 9	—
India 3% 1948 or after	JAJO	66	4 10 11	—
Sudan 4½% 1939-73	FA	108	4 3 4	2 17 11
Sudan 4% 1974 Red. in part after 1950	MN	108	3 14 1	3 7 6
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	100	3 0 0	3 0 0
COLONIAL SECURITIES				
*Australia (Commonw'th) 5% 1945-75	JJ	104	4 16 2	4 11 2
Canada 3½% 1930-50	JJ	98	3 11 5	3 13 2
*Cape of Good Hope 3½% 1929-49	JJ	99	3 10 8	3 11 8
Natal 3% 1929-49	JJ	94	3 3 10	3 10 5
New South Wales 3½% 1930-50	JJ	90	3 17 9	4 6 10
*New South Wales 5% 1945-65	JD	103	4 17 1	4 13 4
*New Zealand 4½% 1948-58	MS	103	4 7 5	4 4 6
*New Zealand 5% 1946	JJ	106	4 14 4	4 6 11
*Queensland 4% 1940-50	AO	99	4 0 10	4 1 8
*South Africa 5% 1945-75	JJ	110	4 10 11	3 18 9
*South Australia 5% 1945-75	JJ	104	4 16 2	4 11 2
Tasmania 3½% 1920-40	JJ	98	3 11 5	3 17 1
Victoria 3½% 1929-49	AO	93	3 15 3	4 2 0
*W. Australia 4% 1942-62	JJ	99	4 0 10	4 1 2
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	83	3 12 3	—
Birmingham 4½% 1948-68	AO	112	4 0 4	3 9 3
*Cardiff 5% 1945-65	MS	110	4 10 11	3 18 9
Croydon 3% 1940-60	AO	93	3 4 6	3 8 0
*Hastings 5% 1947-67	AO	114	4 7 9	3 14 0
Hull 3½% 1925-55	FA	98xd	3 11 5	3 12 8
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	98	3 11 5	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	71	3 10 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	83	3 12 3	—
Manchester 3% 1941 or after	FA	83xd	3 12 3	—
Metropolitan Consd. 2½% 1920-49	MJSD	92½	2 14 1	3 2 1
Metropolitan Water Board 3% "A" 1963-2003	AO	85	3 10 7	3 11 9
Do. do. 3% "B" 1934-2003	MS	87	3 9 0	3 10 1
Do. do. 3% "E" 1953-73	JJ	93	3 4 6	3 6 5
*Middlesex C.C. 3½% 1927-47	FA	100xd	3 10 0	3 10 0
Do. do. 4½% 1950-70	MN	113	3 19 8	3 9 5
Nottingham 3% Irredeemable	MN	83	3 12 3	—
*Stockton 5% 1946-66	JJ	112	4 9 3	3 16 2
ENGLISH RAILWAY PRIOR CHARGES				
Gt. Western Rly. 4% Debenture	JJ	100¼xd	3 19 7	—
Gt. Western Rly. 5% Rent Charge	FA	114¼xd	4 7 4	—
Gt. Western Rly. 5% Preference	MA	92½	5 8 1	—
‡L. & N.E. Rly. 4% Debenture	JJ	89	4 9 11	—
‡L. & N.E. Rly. 4% 1st Guaranteed	FA	76½	5 4 7	—
‡L. Mid. & Scot. Rly. 4% Debenture	JJ	92½	4 6 6	—
‡L. Mid. & Scot. Rly. 4% Guaranteed	MA	85½	4 13 7	—
Southern Rly. 4% Debenture	JJ	100½	3 19 7	—
Southern Rly. 5% Guaranteed	MA	109½	4 11 4	—
Southern Rly. 5% Preference	MA	95½	5 4 9	—

* Not available to Trustees over par.
† In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other stocks, as at the latest date.
‡ These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Companies' Ordinary Stocks for the past year.

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Report, Balance Sheet and full particulars from the Secretary, LEWIS H. BURTT,

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ABSOLUTE REVERSION on decease of life 74 to £3,450 5 per cent. Conversion Stock.—Solicitor: A. J. Hunter, Esq., 54, Victoria-street, S.W.1.

ABSOLUTE REVERSION on decease of life 54 to ½ of £3,000 War Loan.—Solicitors: Messrs. Wade-Gery & Brackenbury, St. Neots. Trustee: W. P. Theakston, Esq., F.S.I., F.A.I., Market-hill, Huntingdon.

ABSOLUTE REVERSION to about £565 on decease of life 52.—Solicitors: Messrs. Murton Clarke & Murton-Neale, Cranbrook, Kent. Particulars also of C. A. Winch, Esq., F.S.I., Cranbrook, Kent.

COLLATERAL SECURITIES of £100, secured upon property at Clapham and Dulwich.—Solicitor: W. T. Donovan, Esq., 188, Mitcham-road, S.W.17; Estate Agents, Messrs. Austin & Co., 333, High-road, N.W.6.

ABSOLUTE REVERSION on decease of life 69 to 1-6 of freehold property at Beckenham-road, Penge.—Solicitors: Messrs. Wilson & Toyne, 3, Cecil-square, Margate.

ABSOLUTE REVERSION on decease of life 60 to ⅛ of £3,620.—Solicitors: Messrs. Jackson & Sons, Ringwood, Hants. Trustee: E. H. Hawkins, Esq., F.S.A.A., 4 Charterhouse-square, E.C.1.

REVERSION to about £1,000 on decease without issue of male 55.—Solicitors: Messrs. W. B. Francis & Son, Cardiff. Trustee: Dennis H. Morgan, Esq., F.C.A., 2, Windsor-place, Cardiff.

ABSOLUTE REVERSION on decease of life 76 to one-third of property and investments; also a one-third share in possession in about £250.—Solicitor: J. Knight, Esq., Bournemouth.

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